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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 75, No. 160
Thursday, August 19, 2010

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0530; Airspace Docket No. 10–AWP–10]

Amendment of Class D and Class E Airspace; Kaneohe, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class D and Class E airspace at Kaneohe Bay Marine Corps Air Station (MCAS), Kaneohe, HI. The FAA is taking this action in response to a request from the National Aeronautical Navigation Services (NANS) to update the geographic coordinates of the MCAS to aid in the navigation of our National Airspace System. This action will also change the airport's name.

DATES: *Effective Date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

The FAA received a request from NANS to better clarify the legal description of the existing Class D and Class E airspace area for the Kaneohe Bay MCAS. Specifically, the geographic coordinates of the airport need to be adjusted, and the airport name needs to be changed. This action is in response to that request.

Class D and Class E airspace designations are published in paragraph 5000, 6002 and 6005, respectively, of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action will amend Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace, Class E surface airspace and Class E airspace upward from 700 feet above the surface at Kaneohe Bay MCAS, Kaneohe Bay, HI. The geographic coordinates of the airport will be adjusted to coincide with the FAA's National Aeronautical Navigation Services. The airport name will change from Kaneohe MCAS to Kaneohe Bay MCAS, Kaneohe, HI. This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Kaneohe Bay MCAS, Kaneohe, HI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP HI D Kaneohe MCAS, HI [Amended]

Kaneohe Bay MCAS, HI
(Lat. 21°27′02″ N., long. 157°46′05″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of the Kaneohe Bay MCAS. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

Paragraph 6002 Class E Airspace designated as surface areas.

* * * * *

AWP HI E2 Kaneohe MCAS, HI [Modified]

Kaneohe Bay MCAS, HI
(Lat. 21°27′02″ N., long. 157°46′05″ W.)

That airspace extending upward from the surface within a 4.3-mile radius of the Kaneohe Bay MCAS. This Class E airspace area is effective during the specific dates and

times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP HI E5 Kaneohe MCAS, HI [Amended]

Kaneohe Bay MCAS, HI
(Lat. 21°27′02″ N., long. 157°46′05″ W.)

That airspace extending from 700 feet above the surface beginning at lat. 21°22′59″ N., long. 157°44′30″ W., thence clockwise along the 4.3-mile radius of the Kaneohe Bay MCAS, thence to lat. 21°28′26″ N., long. 157°50′27″ W.; to lat. 21°32′15″ N., long. 157°51′07″ W., thence clockwise via the 7-mile arc of Kaneohe Bay MCAS to lat. 21°22′47″ N., long. 157°40′07″ W., thence to the point of beginning.

Issued in Seattle, Washington, on August 9, 2010.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–20412 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0402; Airspace Docket No. 10–AGL–6]

Amendment of Class E Airspace; Perham, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Perham, MN to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Perham Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 17, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Perham, MN, creating additional controlled airspace at Perham Municipal Airport (75 FR 27496) Docket No. FAA–2010–0402. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Perham Municipal Airport, Perham, MN. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Perham Municipal Airport, Perham, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL MN E5 Perham, MN [Amended]

Perham Municipal Airport, MN
(Lat. 46°36′15″ N., long. 95°36′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Perham Municipal Airport.

Issued in Fort Worth, Texas, on August 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–20398 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0401; Airspace Docket No. 10–AGL–8]

Amendment of Class E Airspace; Litchfield, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Litchfield, MN, to

accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Litchfield Municipal Airport, Litchfield, MN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 17, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Litchfield, MN, creating additional controlled airspace at Litchfield Municipal Airport (75 FR 27495) Docket No. FAA–2010–0401. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Litchfield Municipal Airport, Litchfield, MN. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Litchfield Municipal Airport, Litchfield, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL MN E5 Litchfield, MN [Amended]

Litchfield Municipal Airport, MN
(Lat. 45°05′50″ N., long. 94°30′26″ W.)
Darwin VORTAC
(Lat. 45°05′15″ N., long. 94°27′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Litchfield Municipal Airport, and within 8 miles north and 4 miles south of the Darwin VORTAC 104° radial extending from the 6.3-mile radius to 18.4 miles east of the airport.

Issued in Fort Worth, Texas, on August 3, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–20401 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0002; Airspace Docket No. 09–ANM–32]

Amendment of Class E Airspace; Port Angeles, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend existing Class E airspace at Port Angeles, WA. The Ediz Hook Nondirectional Radio Beacon (NDB) has been decommissioned and removed. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 14, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Port Angeles, WA (75 FR 33556). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace

designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, at William R. Fairchild International Airport, Port Angeles, WA, due to the decommissioning of the Ediz Hook NDB. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at William R. Fairchild International Airport, Port Angeles, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WA, E2 Port Angeles, WA [Amended]

Port Angeles, William R. Fairchild International Airport, WA
(Lat. 48°07′13″ N., long. 123°29′59″ W.)

Within a 4.1-mile radius of the William R. Fairchild International Airport, and within 3 miles north and 2.2 miles south of the William R. Fairchild International Airport 079° bearing extending from the 4.1-mile radius to 11.4 miles east of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA, E5 Port Angeles, WA [Amended]

Port Angeles, William R. Fairchild International Airport, WA
(Lat. 48°07′13″ N., long. 123°29′59″ W.)
Port Angeles CGAS
(Lat. 48°08′28″ N., long. 123°24′51″ W.)

That airspace extending upward from 700 feet above the surface within a 4.1-mile radius of the William R. Fairchild International Airport, and within a 4.1-mile radius of Port Angeles CGAS, and within 2.7 miles north and 4.3 miles south of the William R. Fairchild International Airport 079° bearing extending from the 4.1-mile radius to 11.4 miles east of the airport, and including the airspace within 1.8 miles either side of the William R. Fairchild International Airport 285° bearing extending from the 4.1-mile radius to 7 miles west of the airport; that airspace extending upward from 1,200 feet above the surface bounded on the east by the west edge of V–495, on the south by V–4, on the west by long. 124°02'05"W., and on the north by the United States/Canadian border.

Issued in Seattle, Washington, on August 12, 2010.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–20521 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0181; Airspace Docket No. 10–ASW–3]

Amendment of Class E Airspace; Center, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Center, TX to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Center Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 17, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Center, TX, creating additional controlled airspace at Center Municipal Airport (75 FR 27493) Docket No. FAA–2010–0181. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document

will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Center Municipal Airport, Center, TX. Adjustments to the geographic coordinates also will be made in accordance with the FAA's National Aeronautical Navigation Services. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Center Municipal Airport, Center, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW TX E5 Center, TX [Amended]

Center Municipal Airport, TX
(Lat. 31°49′54″ N., long. 94°09′23″ W.)
Amason NDB
(Lat. 31°49′58″ N., long. 94°09′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Center Municipal Airport and within 2.5 miles each side of the 341° bearing from the Amason NDB extending from the 6.5-mile radius to 7.5 miles northwest of the airport, and within 3.3 miles each side of the 171° bearing from the airport extending from the 6.5-mile radius to 9.8 miles south of the airport.

Issued in Fort Worth, Texas, on August 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–20402 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0403; Airspace Docket No. 10–ACE–4]

Establishment of Class E Airspace; Perryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Perryville, MO to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Perryville Municipal Airport, Perryville, MO. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 4, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Perryville, MO, creating additional controlled airspace at Perryville Municipal Airport (75 FR 23636) Docket No. FAA–2010–0403. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Perryville Municipal Airport, Perryville, MO. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Perryville Municipal Airport, Perryville, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE MO E5 Perryville, MO [Amended]

Perryville Municipal Airport, MO
(Lat. 37°52′07″ N., long. 89°51′44″ W.)
Farmington VORTAC, MO
(Lat. 37°40′24″ N., long. 90°14′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Perryville Municipal Airport and within 1.8 miles each side of the 057° radial of the Farmington VORTAC extending from the 6.6-mile radius to 8.2 miles southwest of the airport, and within 3.9 miles each side of the 197° bearing from the airport extending from the 6.6-mile radius to 11 miles south of the airport.

Issued in Fort Worth, Texas, on August 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–20396 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0182; Airspace Docket No. 10–ASW–4]

Establishment of Class E Airspace; Pauls Valley, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Pauls Valley, OK to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Pauls Valley Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 17, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Pauls Valley, OK, creating additional controlled airspace at Pauls Valley Municipal Airport (75 FR 27494) Docket No. FAA–2010–0182. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Pauls Valley Municipal Airport, Pauls Valley, OK. Adjustments to the geographic coordinates also will be made in accordance with the FAA's National Aeronautical Navigation Services. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Pauls Valley Municipal Airport, Pauls Valley, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW OK E5 Pauls Valley, OK [Amended]

Pauls Valley Municipal Airport, OK
(Lat. 34°42′34″ N., long. 97°13′24″ W.)
Pauls Valley NDB
(Lat. 34°42′55″ N., long. 97°13′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Pauls Valley Municipal Airport and within 2.6 miles each side of the 169° bearing from the Pauls Valley NDB extending from the 6.6-mile radius to 7.6 miles south of the airport, and within 4 miles each side of the 000° bearing from the airport extending from the 6.6-mile radius to 11.5 miles north of the airport.

Issued in Fort Worth, Texas, on August 6, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–20397 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0387; Airspace Docket No. 10–ANM–1]

Revocation of Class E Airspace; Eastsound, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will remove Class E surface airspace at Orcas Island Airport, Eastsound, WA. Controlled airspace already exists in the Eastsound, WA area that accommodates the safety and management of aircraft operations at Orcas Island Airport.

DATES: *Effective Date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On May 28, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Eastsound, WA (75 FR 29963). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by removing Class E surface airspace at Orcas Island Airport, Eastsound, WA. Controlled airspace extending upward from 700 feet above the surface already exists, making the Class E surface airspace unnecessary.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Orcas Island Airport, Eastsound, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WA E2 Eastsound, WA [Removed]

Issued in Seattle, Washington, on August 9, 2010.

Lori Andriesen,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–20399 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1215

Safety Standard for Infant Bath Seats; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: The United States Consumer Product Safety Commission ("CPSC" or "Commission") is correcting a final rule that appeared in the **Federal Register** of June 4, 2010 (75 FR 31691). The document established a standard for infant bath seats by incorporating by reference ASTM F 1967–08a with certain changes. The Commission is correcting an error that left in an introductory phrase in one provision concerning the stability requirements that should have been omitted from the standard.

DATES: Effective on December 6, 2010.

FOR FURTHER INFORMATION CONTACT: Carolyn Manley, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7607; *cmanley@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published in the **Federal Register** of June 4, 2010 (75 FR 31691) a final rule establishing a standard for infant bath seats by incorporating by reference ASTM F 1967–08. An introductory phrase in the stability performance requirements in the ASTM standard should have been removed to make the provision consistent with the Commission's definition of "bath seat." The preamble to the final rule stated: "the final rule removes the beginning phrase in section 6.1: 'for bath seats which provide support for an occupant's back and support for the sides or front of the occupant or both.' Given the definition of bath seat in the final rule, this phrase is redundant, and the final rule, therefore eliminates it." 75 FR 31696. However, the text of the standard did not remove the introductory phrase. This notice corrects that error by restating section 6.1 of ASTM F 1967–08a without the introductory phrase, and adding at the end the language the Commission is adding to this section of the ASTM standard.

■ In FR Doc. 2010–13073 appearing on page 31691 in the **Federal Register** of Friday, June 4, 2010, the following correction is made:

§ 1215.2 [Corrected]

■ 1. On page 31698, in the second column, in § 1215.2 Requirements for infant bath seats, paragraph (b)(2) is corrected to read, "In addition to section 6.1 of ASTM F 1967–08a, comply with the following:

(i) 6.1 *Stability*—* * * If any time during the application of force, the seat is no longer in the initial 'intended use position' and is tilted at an angle of 12 degrees or more from its initial starting position, it shall be considered a failure."

Should be corrected to read, "Instead of section 6.1 of ASTM F 1967–08a, comply with the following:

(i) 6.1 *Stability*—The geometry and construction of the product shall not allow for any parts of the product to become separated from it, shall not sustain permanent damage, and shall not allow the product to tip over after being tested in accordance with 7.4. In addition, if any attachment point disengages from (is no longer in contact with) the test platform and then fails to return to its manufacturer's intended use position after being tested in accordance with 7.4, it fails the requirement. This test shall be conducted after the Mechanisms Durability test in 7.1.3. If any time during the application of force, the seat is no longer in the initial 'intended use position' and is tilted at an angle of 12 degrees or more from its initial starting position, it shall be considered a failure."

Dated: August 13, 2010.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–20595 Filed 8–18–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1216

Safety Standard for Infant Walkers; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: The United States Consumer Product Safety Commission ("CPSC" or "Commission") is correcting a final rule that appeared in the **Federal Register** of June 21, 2010 (75 FR 35266). The document established a standard for infant walkers. The Commission is correcting a typographical error in one provision and correcting another provision concerning warning statements on walkers with parking brakes.

DATES: Effective on December 21, 2010.

FOR FURTHER INFORMATION CONTACT: Carolyn Manley, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7607; *cmanley@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 21, 2010 (75 FR 35266), the Commission published a final rule establishing a standard for infant walkers pursuant to section 104(b) of the Consumer Product Safety Improvement Act of 2008. The final rule contained two errors which the Commission is now correcting.

The first correction pertains to § 1216.2(b)(11)(i) regarding the position of the walker's wheels during testing. The first sentence in § 1216.2(b)(11)(i) refers to "Plane B," but the last sentence in the same section refers, incorrectly, to "Plane A" (see 75 FR at 35275 (col. 3) through 35276 (col. 2)). The Commission is correcting the rule to refer to "Plane B" in the last sentence.

Another provision, at § 1216.2(b)(21)(i), concerning a warning statement for walkers with parking brakes omitted a phrase indicating that the warning is only required for walkers that have parking brakes. The preamble to the final rule correctly noted that the warning is to apply if a walker has a parking brake (see 75 FR at 35271). This document makes the necessary corrections.

■ In FR Doc. 2010–14323 appearing on page 35266 in the **Federal Register** of Monday, June 21, 2010, the following correction is made:

§ 1216.2 [Corrected]

■ 1. On page 35276, in the second column, in § 1216.2 Requirements for infant walkers, in paragraph (b)(11)(i), "Position the swivel wheels in such a way that the walker moves sideward in a straight line parallel to Plane A." is corrected to read "Position the swivel wheels in such a way that the walker moves sideward in a straight line parallel to Plane B."

■ 2. On page 35278, in the third column, in § 1216.2 Requirements for infant walkers, in paragraph (b)(21)(i), "A warning statement shall address the following" is corrected to read "If the walker is equipped with a parking brake, a warning statement shall address the following."

Dated: August 13, 2010.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–20593 Filed 8–18–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending a rule that implements its authority under the District of Columbia Youth Rehabilitation Act to set aside a conviction for a youth offender. The rule acknowledges the Commission's authority to set aside a youth offender's misdemeanor conviction and describes the information the Commission examines in making such a determination. Also, the rule clarifies the Commission's policy for issuing a set-aside certificate for a youth offender who was formerly on supervised release and who was not reviewed for the set-aside certificate before the offender's sentence expired. The rule adopts the Commission's established criteria for conducting set-aside reviews when a youth offender's parole term ends before such a review has been held.

DATES: *Effective Date:* September 27, 2010.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The District of Columbia Youth Rehabilitation Act authorizes the Parole Commission to set aside a conviction for a deserving youth offender who has been committed under that Act. DC Code 24–906. Normally, the Commission reviews a youth offender's case for issuance of a set-aside certificate after the offender has served a period of community supervision on parole or supervised release following discharge from the commitment portion of the sentence. DC Code 24–906(a), (c), and (d) require the issuance of a set-aside certificate if the Commission terminates parole supervision or supervised release before the expiration of the committed youth offender's sentence. Under Section 24–906(b), the Commission is also granted the authority to exercise discretion to set aside a committed youth offender's conviction if the offender's sentence expires before the Commission can review the case for the unconditional discharge of the offender. This situation will normally arise when: (1) A youth offender's jail term for a misdemeanor conviction expires and the offender is discharged from the custody of the DC Department of Corrections without further supervision in the community; or (2) a youth offender is unconditionally discharged from parole supervision or supervised release and the Commission somehow did not review the case for early termination from supervision.

Until this rule change, the Commission's regulations did not address the agency's authority to grant a set-aside certificate for the misdemeanor youth offender, or the youth offender formerly on supervised release whose case somehow escaped Commission review before the expiration of the supervised release term. Nonetheless, the Commission has been carrying out its statutory authority to consider these offenders for set-aside certificates. To fill the gap in its rules, the Commission is amending 28 CFR 2.208(a) to provide a brief statement of the Commission's authority to issue a set-aside certificate after the youth offender's sentence expires, and the information the Commission would consider in granting or denying the set-aside certificate. For former supervised releasees, the amendment includes a cross-reference to § 2.106(f)(3), which describes the Commission's criteria for issuing a set-aside certificate *nunc pro tunc* for a youth offender who was on parole supervision and who was not reviewed for early termination from supervision (and the possible issuance of the set-aside certificate) before the expiration of the sentence.

Executive Order 12866

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

The rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a "major rule" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term "rule" as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

■ Accordingly, the U.S. Parole Commission is making the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.208(a)(2) to read as follows:

§ 2.208 Termination of a term of supervised release.

(a) * * *

(2) Upon terminating supervision of a committed youth offender before the sentence expires, the Commission shall set aside the offender's conviction and issue a certificate setting aside the conviction instead of a certificate of discharge. The Commission may issue a

set-aside certificate *nunc pro tunc* for a youth offender previously under supervised release on the sentence and who was not considered for early termination from supervision, using the criteria stated at § 2.106(f)(3). If the youth offender was sentenced only to a term of incarceration without any supervision to follow release, the Commission may issue a set-aside certificate after the expiration of the sentence. In such cases, the Commission shall determine whether to grant the set-aside certificate after considering factors such as the offender's crime, criminal history, social and employment history, record of institutional conduct, efforts at rehabilitation, and any other relevant and available information.

* * * * *

Dated: August 13, 2010.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2010–20560 Filed 8–18–10; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0020]

RIN 1625–AA00

Safety Zone; AVI September Fireworks Display, Laughlin, Nevada, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. to 9:45 p.m. on September 5, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0020 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0020 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 3, 2010 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; AVI September Fireworks Display; Laughlin, Nevada, NV in the **Federal Register** (75 FR 23206). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The AVI Resort and Casino is sponsoring the AVI May fireworks display, which is to be held at the AVI Resort and Casino on the Lower Colorado River in Laughlin, Nevada. The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV in support of the AVI May fireworks display adjacent to the AVI Resort and Casino on the Lower Colorado River, Laughlin, NV. The safety zone is set as an 800 foot radius around the firing site in approximate position: 35°00′93′ N, 114°38′28′ W. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Comments and Changes

There were no comments submitted and no changes were made to the regulation.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8 p.m. to 9:45 p.m. on September 5, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for one hour and 45 minutes late in the evening when vessel traffic is low. Before the effective period, we will publish a Local Notice to Mariners (LNM).

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call

1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–299 to read as follows:

§ 165.T11–299 Safety Zone; AVI September Fireworks Display; Laughlin, NV.

(a) *Location.* The limits of the proposed safety zone are as follows: Will include all navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′93″ N, 114°38′28″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on September 5, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the

Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: July 23, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–20602 Filed 8–18–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XY10

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted from one to three large medium or giant BFT for the September, October-November, and December time periods of the 2010 fishing year, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category permitted vessels and Highly Migratory Species Charter/Headboat category permitted vessels (when fishing commercially for BFT).

DATES: Effective September 1, 2010, through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT), and implemented domestically pursuant to ATCA, among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2010 BFT fishing year began on January 1, 2010, and ends December 31, 2010. The General category fishery (the commercial tunas fishery in which handgear is used) is open until December 31, 2010, or until the General category quota is reached.

Adjustment of General Category Daily Retention Limit

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

On June 2, 2010, NMFS published final specifications (75 FR 30732), including an adjusted General category quota of 538.9 mt, and increased the default General category daily retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel to three large medium or giant BFT per vessel for June 1 through August 31, 2010 (75 FR 30730).

Despite an elevated three-fish daily retention limit, 2010 General category landings remain low. As of July 31, 2010, 58.8 mt of the adjusted 2010 General category quota have been landed, and landings rates remain less than 1.0 mt per day. Starting on September 1, 2010, the General category daily retention limit, at 50 CFR 635.23(a)(2), is scheduled to revert back to the default daily retention limit of one large medium or giant BFT per vessel. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT, as specified and to the extent allowable under the regulations).

Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high. Given the rollover of unused quota from the January and June-August time periods, current catch rates, and the fact that the daily retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2010, absent agency action, NMFS anticipates the full 2010 General category quota will not be harvested. Increasing the daily retention limit from the default of one fish may mitigate rolling an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota. Excessive rollover is undesirable because it: (1) effectively changes the time-period subquota allocation percentages established in the 2006 Consolidated HMS FMP, which were selected to provide a specific balance of fishing opportunities to further achieve optimum yield without excluding traditional participants in the fishery; and (2) could have inadvertent negative ecological impacts associated with a temporal and spatial shift in fishing effort.

NMFS has considered the set of criteria cited above and their applicability to the commercial BFT retention limit for the remainder of the 2010. Based on these considerations, NMFS has determined that the General category retention limit should be adjusted to allow for harvest of the established General category quota. Therefore, NMFS increases the General category retention limit from the default limit to three large medium or giant BFT per vessel per day/trip effective September 1, 2010, through December 31, 2010. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; to help achieve optimum yield in the General category BFT fishery; to collect a broad range of data for stock monitoring purposes; and to be consistent with the objectives of the 2006 Consolidated HMS FMP.

In August 2009, NMFS followed a similar course of action and raised the General category retention limits via inseason action to allow for a three BFT daily retention limit throughout 2009 (74 FR 44296, August 28, 2009). Other than for the January period, which is allocated a relatively small amount of quota, NMFS has maintained the General category daily retention limit at the maximum of three fish for several years. NMFS would address the January 2010 General category daily retention limit via a separate inseason action later in the year, if necessary.

Monitoring and Reporting

NMFS selected the daily retention limit for September-December 2010 after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates in the BFT fisheries, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closure of the General category or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *www.hmspermits.gov*, for updates on quota monitoring and retention limit adjustments.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen who depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP. Adjustment of the retention limit needs to be effective September 1, 2010, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities.

Classification

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., the default General category retention limit is one fish per vessel/trip whereas this action increases that limit and allows retention of additional fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30–day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 13, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–20621 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100218107–0199–01]

RIN 0648–XX92

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #5, #6, #7, and #8

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons, gear restrictions, and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces four inseason actions in the ocean salmon fisheries. Inseason actions #5, #6, and #7 modified the commercial fishery in the area from U.S./Canada Border to Cape Falcon, Oregon. Inseason action #8 modified the recreational fishery in the area from U.S./Canada Border to Cape Falcon, Oregon.

DATES: Inseason action #5 was effective on June 18, 2010, and remains in effect until the closing date announced in the 2010 annual management measures or through additional inseason action. Inseason action #6 was effective on June 25, 2010, and remains in effect until the

closing date of the 2010 salmon season announced in the 2010 annual management measures or through additional inseason action. Inseason action #7 was effective July 1, 2010, and remains in effect until the closing date announced in the 2010 annual management measures or through additional inseason action. Inseason action #8 was effective July 8, 2010, and remains in effect until the closing date announced in the 2010 annual management measures or through additional inseason action. Comments will be accepted through September 3, 2010.

ADDRESSES: You may submit comments, identified by 0648–XX92, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 206–526–6736, Attn: Peggy Busby
- Mail: 7600 Sand Point Way NE, Building 1, Seattle, WA, 98115

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Busby, by phone at 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2010 annual management measures for ocean salmon fisheries (75 FR 24482, May 5, 2010), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2010.

The Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on June 15, 2010. The information considered during this consultation related to Chinook salmon catch to date and Chinook salmon catch rates compared to quotas and other management measures established preseason.

Inseason action #5 opened the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon for the five-day period June 18, 2010 through June 22, 2010, with a landing and possession limit of 75 Chinook salmon per vessel per open period north of Leadbetter Point or 75 Chinook salmon per vessel per open period south of Leadbetter Point. This action was taken to allow access to the full quota of Chinook salmon established preseason and to prevent exceeding the quota. On June 15, 2010, the states recommended this action and the RA concurred; inseason action #5 took effect on June 18, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409 (b)(1)(i).

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on June 24, 2010. The information considered during this consultation related to catch to date for Chinook salmon, and Chinook salmon catch rates compared to quotas and other management measures established preseason.

Inseason action #6 opened the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon for the five-day period June 25, 2010 through June 29, 2010, with a landing and possession limit of 25 Chinook salmon per vessel per open period north of Leadbetter Point or 25 Chinook salmon per vessel per open period south of Leadbetter Point. This action was taken to allow access to the full quota of Chinook salmon established preseason and to prevent exceeding the quota. On June 24, 2010, the states recommended this action and the RA concurred; inseason action #6 took effect on June 25, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409 (b)(1)(i) .

Inseason action #7 reduced the landing and possession limits for the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon scheduled to open July 1, 2010. The landing and possession limits of 150 Chinook salmon and 50 coho described in the 2010 annual management measures were reduced to 40 Chinook salmon and 30 coho per vessel per open period north of Leadbetter Point or 40 Chinook salmon and 30 coho per vessel per open period south of Leadbetter Point. This action was taken to manage the Chinook salmon catch rate and allow full access to the coho quota established preseason, extending the availability of quota as much as possible through the season, which is scheduled into September. On June 24, 2010, the states recommended this action and the RA concurred; inseason action #7 took effect on July 1, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409 (b)(1)(i) .

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on July 6, 2010. The information considered during this consultation related to catch to date for Chinook and coho salmon, and Chinook and coho salmon catch rates compared to quotas and other management measures established preseason.

Inseason action #8 modified the daily bag limit for the recreational salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon. The limit set preseason was two fish per day, only one of which could be a Chinook salmon; inseason action #8 modified the limit to two fish per day, both of which can be Chinook salmon. Based on early catch rate data, there was concern that unless the bag limit was modified, the coho quota would be exhausted before the full Chinook salmon guideline established preseason could be used, which would ultimately require the season to be closed early. On July 6, 2010, the states recommended this action and the RA concurred; inseason action #8 took effect on July 8, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409 (b)(1)(i).

All other restrictions and regulations remain in effect as announced in the 2010 Ocean Salmon Fisheries Annual Management Measures and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (75 FR 24482, May 5, 2010), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 13, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–20623 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XY29

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Rock Sole in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of the 2010 rock sole total allowable catch (TAC) specified for the Bering Sea and Aleutian Islands incidental catch allowance ICA to the Amendment 80 cooperative in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2010 total allowable catch of rock sole to be fully harvested.

DATES: Effective August 16, 2010, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XY29, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comment will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 rock sole TAC specified for the Bering Sea and Aleutian Islands ICA is 10,000 metric tons (mt) and the 2010 rock sole TAC specified for the Amendment 80 cooperative is 52,863 mt as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

The Administrator, Alaska Region, NMFS, has determined that 6,000 mt of the rock sole specified for the BSAI ICA will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 6,000 mt of rock sole from the BSAI ICA to the Amendment 80 cooperative in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated rock sole following the procedures set forth in § 679.91(f)(3).

The harvest specifications for rock sole included in the harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) are revised as follows: 4,000 mt to the BSAI ICA and 58,863 mt to the Amendment 80 cooperative in the BSAI. Table 7a is correctly revised and republished in its entirety as follows:

TABLE 7A—FINAL 2010 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian district	Central Aleutian district	Western Aleutian district	BSAI	BSAI	BSAI
TAC	4,220	4,270	6,540	60,000	90,000	219,000
CDQ	452	457	700	6,420	9,630	23,433
ICA	100	50	50	5,000	4,000	2,000
BSAI trawl limited access	367	376	116	0	0	42,369
Amendment 80	3,302	3,387	5,674	48,580	76,370	151,198
Amendment 80 limited access	1,751	1,796	3,009	5,708	17,507	60,465
Amendment 80 cooperatives	1,551	1,591	2,666	42,872	58,863	90,733

This will enhance the socioeconomic well-being of harvesters dependent upon rock sole in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of rock sole by the BSAI trawl limited access sector and, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperative that participates in this BSAI fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of rock sole from the BSAI trawl limited access sector to the Amendment 80 cooperative in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 13, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.91 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–20607 Filed 8–16–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 160
Thursday, August 19, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0829; Directorate Identifier 2010–NE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. (P&WC) PW305A and PW305B Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: As a result of a change in the low-cycle fatigue lifing methodology for the IMI 834 material, the recommended service life of certain PW305A and PW305B Impellers has been reduced, as published in the Airworthiness Limitations (AWL) section of Engine Maintenance Manual (EMM). The in-service life of impellers P/N 30B2185, 30B2486 and 30B2858–01 has been reduced from 12,000 to 7,000 cycles; and of P/N 30B4565–01 from 8,500 to 7,000 cycles. We are proposing this AD to prevent failure of the impeller, which could result in an uncontained event and possible damage to the airplane.

DATES: We must receive comments on this proposed AD by October 4, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone 800–268–8000; fax 450–647–2888; Web site: *www.pwc.ca*, for the service information identified in this proposed AD.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* phone: (781) 238–7176; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0829; Directorate Identifier 2010–NE–23–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

Transport Canada, which is the aviation authority for Canada, has issued Canada Airworthiness Directive CF–2010–09, dated March 17, 2010, (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> As a result of a change in the low-cycle fatigue lifing methodology for the IMI 834 material, the recommended service life of certain PW305A and PW305B Impellers has been reduced, as published in the Airworthiness Limitations (AWL) section of Engine Maintenance Manual (EMM).
>
> The in-service life of impellers P/N 30B2185, 30B2486 and 30B2858–01 has been reduced from 12,000 to 7,000 cycles; and of P/N 30B4565–01 from 8,500 to 7,000 cycles.
>
> This Airworthiness Directive (AD) is issued to mandate the incorporation of the revised in-service life limits for the affected impellers, in the AWL section of EMM, as introduced by Temporary Revision (TR) AL–8.
>
> Within 30 days from the effective date of this AD, update AWL section of your PW305 EMM P/N 30B1402, to incorporate TR AL–8 for compliance with the revised in-service limits for the affected Impellers, installed on PW305A and PW305B engine.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Pratt & Whitney Canada has issued Maintenance Manual Part Number 30B1402 Temporary Revision No. AL–8, dated January 20, 2010. The reduced cycle limits described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Canada, and is approved for operation in the United

States. Pursuant to our bilateral agreement with Canada, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by Canada and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 114 products of U.S. registry. We also estimate that it would take about 0 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $54,288 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,188,832. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Pratt & Whitney Canada Corp. (Formerly Pratt & Whitney Canada, Inc.): Docket No. FAA–2010–0829; Directorate Identifier 2010–NE–23–AD.

Comments Due Date

(a) We must receive comments by October 4, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada Corp. (P&WC) PW305A and PW305B turboprop engines with certain impellers, part numbers (P/Ns) 30B2185, 30B2486, 30B2858–01, or 30B4565–01 installed. These engines are installed on, but not limited to, Hawker-Beech Corporation BAe.125 series 1000A, 1000B, and Hawker 1000 airplanes and Learjet Inc. Learjet 60 airplanes.

Reason

(d) This AD results from:

As a result of a change in the low-cycle fatigue lifing methodology for the IMI 834 material, the recommended service life of certain PW305A and PW305B Impellers has been reduced, as published in the Airworthiness Limitations (AWL) section of Engine Maintenance Manual (EMM).

The in-service life of impellers P/N 30B2185, 30B2486 and 30B2858–01 has been reduced from 12,000 to 7,000 cycles; and of P/N 30B4565–01 from 8,500 to 7,000 cycles.

We are issuing this AD to prevent failure of the impeller, which could result in an uncontained event and possible damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(f) Within 30 days from the effective date of this AD, update AWL section of your PW305 EMM P/N 30B1402, to incorporate Temporary Revision (TR) AL–8, dated January 20, 2010, for compliance with the revised in-service limits for the affected Impellers, installed on PW305A and PW305B engine.

FAA AD Differences

(g) None.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(i) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Refer to MCAI Transport Canada Airworthiness Directive CF–2010–09, dated March 17, 2010, and P&WC Temporary Revision No. AL–8, dated January 20, 2010, to P&WC EMM P/N 30B1402 for related information. Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone (800) 268–8000; fax (450) 647–2888; or go to: *http://www.pwc.ca,* for a copy of this service information.

(k) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* phone: (781) 238–7176; fax: (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on August 13, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–20561 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0716; FRL–9191–3]

Disapproval and Promulgation of Air Quality Implementation Plans; Indiana; Addition of Incentive for Regulatory Flexibility for Its Environmental Stewardship Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 6, 2007, the Indiana Department of Environmental Management (IDEM) submitted a request to EPA to amend its State Implementation Plan (SIP) to add

incentives for regulatory flexibility for participants in its Environmental Stewardship Program (ESP) and Comprehensive Local Environmental Action Network (CLEAN) Community Challenge Program. Indiana requested that EPA approve the following for ESP and CLEAN members: The incorporation by reference of certain incentives under the National Environmental Performance Track (NEPT) Program, monthly averaging of volatile organic compound (VOC) coating limits, and the processing of pollution prevention projects as minor permit revisions. For the reasons discussed below, EPA is proposing to disapprove these three incentives.

DATES: Comments must be received on or before September 20, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0716, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: rosenthal.steven@epa.gov.*
3. *Fax:* (312) 692–2553.
4. *Mail:* Steven Rosenthal, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Steven Rosenthal, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0716. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the purpose and background for this action?

The ESP is Indiana's voluntary program designed to recognize and reward Indiana regulated entities that have met a standard of environmental compliance, implemented and maintained an environmental management system, and committed to continuous environmental improvement. In return for meeting the above criteria, these establishments receive program incentives including regulatory flexibility, public recognition, and networking opportunities. The CLEAN Community Challenge Program is a similar program for local Indiana governments.

Indiana is requesting that EPA approve the following incentives for its ESP and CLEAN Community Challenge Programs into its SIP: Incorporation by reference of certain provisions under the NEPT Program, monthly averaging of volatile organic compound (VOC) coating limits, and allowing pollution prevention projects that do not result in a net increase in potential emissions of more than certain SIP significance levels to be processed as minor permit revisions.

III. What is EPA's analysis of Indiana's rule amendment?

NEPT Incentives

Indiana rule 326 IAC 25–2–1 incorporates by reference the Performance Track provisions at 40 CFR 63.2, 40 CFR 63.10, and 40 CFR 63.16. The incentives in these Federal rules are only available to members of the NEPT Program. EPA is proposing to disapprove this provision because in a May 14, 2009, **Federal Register** notice (74 FR 22741), it announced its decision to terminate the Performance Track Program, effective as of the date of the May 14, 2009, notice.

Monthly Averaging

Indiana rule 326 IAC 25–2–3 establishes monthly compliance methods for determining VOC emissions in 326 IAC 8–1–2(a)(7). Under such a methodology, coatings or inks may exceed their applicable VOC emission limits if emissions increases are sufficiently offset by decreases in other coatings or inks such that total emissions are below the applicable limits. This approach constitutes a relaxation of existing emissions limits and is inconsistent with section 110(a) of the Clean Air Act. Consequently, EPA has established very narrow and specific circumstances under which a longer averaging period than daily would be acceptable. See January 20, 1984, memorandum from John R. O'Connor titled "Averaging Times for Compliance with VOC Emission Limits-SIP Revision Policy" and a January 20, 1987, memorandum from G.T. Helms titled "Determination of Economic Feasibility." Under these policies, daily averaging must be used unless recordkeeping is an insurmountable problem, in which case the shortest feasible averaging time should be used, not to exceed monthly averaging. The determination of the shortest feasible averaging time is made by EPA and cannot be delegated to a State. Indiana has not made such a showing, and EPA is, therefore, proposing to disapprove this provision.

Pollution Prevention Projects

As part of the ESP, the State has also submitted for approval 326 IAC 25–2–4, as it applies to pollution prevention projects, as defined in 326 IAC 2–1.1–1(14). This provision would allow pollution prevention projects for sources that are not subject to title V of the Clean Air Act and that do not result in a net increase in potential emissions above the Prevention of Significant Deterioration (PSD)/Nonattainment New Source Review (NNSR) significance levels identified in 326 IAC 2–2–1(xx) to be processed by Indiana as minor permit revisions under the State minor operating permit provisions in 326 IAC 2–6.1–6(h) and the Federally enforceable operation permit provisions in 326 IAC 2–8–11.1(e). These pollution control projects would not be subject to public notice.

The existing Indiana SIP-approved minor construction permit rules require public notice for modifications with emission increases of greater than 25 tons per year (tpy). The proposed public notice exemption, however, would be available for projects with net emission increases of up to the PSD/NNSR threshold, *e.g.,* 40 tpy of volatile organic compounds, 40 tpy of sulfur dioxide, and 100 tpy of carbon monoxide. This would represent a relaxation over the existing SIP-approved minor source public notice requirements for Indiana, and be inconsistent with 40 CFR 51.161, which requires public notice for such modifications. Indiana has not provided EPA with a justification for relaxing existing SIP requirements, nor shown that such revisions would only have a *de minimis* impact. *See, e.g.,* 64 FR 61046–47 (November 9, 1999). Therefore, EPA is proposing to disapprove this provision.

IV. What action is EPA taking?

EPA is proposing to disapprove IDEM's request for an amendment to the Indiana SIP for incentives for regulatory flexibility for its ESP and CLEAN Community Challenge Program. EPA is proposing to disapprove the incorporation by reference of Federal incentives for NEPT members because EPA has discontinued its NEPT program. EPA is proposing to disapprove monthly averaging of VOC coating limits because this would constitute a relaxation that could exacerbate high ozone levels and contribute to violations of the ozone standard. EPA is proposing to disapprove the third incentive, which affects public notice requirements for pollution prevention projects, because it relaxes the existing SIP-approved public notice requirements and is inconsistent with EPA minor new source rule requirements.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely disapproves State law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule disapproves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves a State rule, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it disapproves a State rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing State submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State submission, to use VCS in place of a State submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010–20583 Filed 8–18–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2010–0517]

RIN 1625–AB48

Great Lakes Pilotage Rates—2011 Annual Review and Adjustment

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to increase the rates for pilotage on the Great Lakes to generate sufficient revenue to cover allowable expenses, target pilot compensation, and return on investment. The proposed update reflects a projected August 1, 2011, increase in benchmark contractual wages and benefits and an adjustment for deflation. This rulemaking promotes the Coast Guard's strategic goal of maritime safety.

DATES: Comments and related material must reach the Docket Management Facility on or before September 20, 2010.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2010–0517 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Mr. Paul M. Wasserman, Chief, Great Lakes Pilotage Division, Commandant (CG–5522), U.S. Coast Guard, at 202–372–1535, by fax 202–372–1909, or by e-mail at *Paul.M.Wasserman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0517), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0517" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the

"Keyword" box insert "USCG–2010–0517" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

AMOU American Maritime Officers Union
MISLE Marine Information for Safety and Law Enforcement
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969
NPRM Notice of proposed rulemaking
NVMC National Vessel Movement Center
OMB Office of Management and Budget

III. Background

This notice of proposed rulemaking (NPRM) is issued pursuant to Coast Guard regulations in 46 CFR Parts 401–404. Those regulations implement the Great Lakes Pilotage Act of 1960, 46 U.S.C. Chapter 93 ("the Act"), which requires foreign-flag vessels and U.S.-flag vessels engaged in foreign trade to use federally registered Great Lakes pilots while transiting the St. Lawrence Seaway and the Great Lakes system, and which requires the Secretary of Homeland Security to "prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services." 46 U.S.C. 9303(f). There is no minimum tonnage limit or exemption for these vessels, but the Coast Guard's interpretation is that the Act applies only to commercial vessels and not to recreational vessels.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage Districts. Pilotage in each District is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while the Coast Guard sets rates, it does not control the actual compensation that pilots receive. This is determined by each of the three District associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation No. 3385, as amended by Proclamation No. 3855, pursuant to the Act, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. Under the Act, pilots assigned to vessels in these areas are only required to "be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master." 46 U.S.C. 9302(a)(1)(B).

The Act requires annual reviews of pilotage rates and the setting of new rates at least once every five years, or sooner, if annual reviews show a need. 46 U.S.C. 9303(f), 46 CFR 404.1. To assist in calculating pilotage rates, the pilotage associations are required to submit to the Coast Guard annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the mandatory rate adjustment, the Coast Guard obtains a full and independent audit of the accounts and records of the pilotage associations and prepare and submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, the Coast Guard generates the pilotage rates using Appendix A to 46 CFR Part 404. Between the five-year full ratemaking intervals, the Coast Guard annually reviews the pilotage rates using Appendix C to Part 404, and adjusts rates when deemed appropriate. Terms and formulas used in Appendix A and Appendix C are defined in Appendix B to Part 404.

The last full ratemaking using the Appendix A methodology was published on April 3, 2006 (71 FR 16501). Since then, rates have been reviewed under Appendix C and adjusted annually: 2007 (72 FR 53158, Sep. 18, 2007); 2008 (interim rule 73 FR 15092, Mar. 21, 2008; final rule 74 FR 220, Jan. 5, 2009); 2009 (74 FR 35812, Jul. 21, 2009); 2010 (75 FR 7958, Feb. 23, 2010). The present rulemaking proposes a rate adjustment for the 2011 shipping season, based on an Appendix C review. At the conclusion of this ratemaking cycle, we anticipate publishing an NPRM proposing a rate adjustment based upon an Appendix A 5-year review and audit of the pilot association books and records.

As we stated in the NPRM for our 2010 Appendix C ratemaking, 74 FR 56153 at 56154 (Oct. 30, 2009), we had anticipated that the next Appendix A ratemaking would be completed in 2011. However, the current rulemaking is not an Appendix A review because the Coast Guard cannot use the audits conducted in 2009 in preparation for the next Appendix A review. Those audits were incomplete and inadequate for determining the expenses of the regulated associations or for use in ratemaking.

The Coast Guard has contracted for new audits that will be conducted during the 2010 navigation season. These audits will serve as the basis for the next Appendix A review, which we will undertake as soon as possible.

IV. Discussion of the Proposed Rule

The Act and Coast Guard pilotage regulations require that the Coast Guard, as delegated by the Secretary of Homeland Security, review the pilotage rates annually. If the annual review shows that pilotage rates are within a reasonable range of the base target pilot compensation set in the previous ratemaking, no adjustment to the rates will be initiated. However, if the annual review indicates that an adjustment is necessary, then the Coast Guard will establish new pilotage rates pursuant to 46 CFR 404.10.

A. Proposed Pilotage Rate Changes—Summarized

The Appendix C to 46 CFR 404 ratemaking methodology is intended for use during the years between Appendix A full ratemaking reviews and adjustments. This section summarizes the rate changes proposed for 2011, and then discusses in detail how the proposed changes were calculated under Appendix C.

We are proposing an increase across all Areas over the last pilotage rate adjustment. This reflects a projected August 1, 2011, increase in benchmark contractual wages and benefits and a deflation adjustment. This rate increase would not go into effect until August 1, 2011, after the current benchmark contracts expire. Actual rate increases vary by Area, and are summarized in Table 1.

TABLE 1—2011 AREA RATE CHANGES

If pilotage service is required in:	Then the proposed percentage increases over the current rate is:
Area 1 (Designated waters)	3.57
Area 2 (Undesignated waters)	3.77
Area 4 (Undesignated waters)	3.75
Area 5 (Designated waters)	3.52
Area 6 (Undesignated waters)	4.89
Area 7 (Designated waters)	3.56
Area 8 (Undesignated waters)	5.26

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420), and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), have been increased by 6.51 percent in all Areas based upon the calculations appearing at Tables 19 through 21, which appear below.

B. Calculating the Rate Adjustment

The Appendix C ratemaking calculation involves eight steps:

Step 1: Calculate the total economic costs for the base period (*i.e.,* pilot compensation expense plus all other recognized expenses plus the return element) and divide by the total bridge hours used in setting the base period rates;

Step 2: Calculate the "expense multiplier," the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual "projection of target pilot compensation" using the same procedures found in Step 2 of Appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

Step 8: Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2010 Appendix C review. The Coast Guard uses the most recent union contracts between the American Maritime Officers Union (AMOU) and vessel owners and operators on the Great Lakes to estimate target pilot compensation. However, the current AMOU contracts expire in July 2011, and the Coast Guard has been informed that contract negotiations will not begin until sometime that year, which is well after the pilotage statute requires that we establish a rate. Accordingly, we have reviewed the terms of both the existing and past AMOU contracts and have projected, for purposes of this ratemaking, that the AMOU contracts effective in 2011 would provide increases in compensation equal to 3 percent, which is the increase called for in the AMOU contracts over the last two years. We project all other benefits to remain fixed at current levels with the exception of medical plan contributions. Medical plan contributions have increased by 10 percent per year from 2006 through 2010 in the current AMOU contracts. Thus, we forecast an increase of 10 percent over 2010 medical plan contributions for the AMOU contracts in 2011. Bridge hour projections for the 2011 season have been obtained from historical data, pilots, and industry. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES**.

Some values may not total exactly due to format rounding for presentation in charts and explanations in this section. The rounding does not affect the integrity or truncate the real value of all calculations in the ratemaking methodology described below.

Step 1: Calculate the total economic cost for the base period. In this step, for each Area, we add the total cost of target pilot compensation, all other recognized expenses, and the return element (net income plus interest). We divide this sum by the total bridge hours for each Area. The result is the cost in each Area of providing pilotage service per bridge hour for the base period. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD (2010), AREAS IN DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario
Base operating expense (less base return element)	$578,569	$590,032
Base target pilot compensation	+ $1,677,397	+ $1,020,120
Base return element	+ $11,571	+ $17,701

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD (2010), AREAS IN DISTRICT ONE—Continued

	Area 1 St. Lawrence River	Area 2 Lake Ontario
Subtotal	= $2,267,537	= $1,627,853
Base bridge hours	÷ 5,203	÷ 5,650
Base cost per bridge hour	= $435.81	= $288.12

TABLE 3—TOTAL ECONOMIC COST FOR BASE PERIOD (2010), AREAS IN DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI
Base operating expense	$541,103	$848,469
Base target pilot compensation	+ $816,096	+ $1,677,397
Base return element	+ $27,055	+ $33,939
Subtotal	= $1,384,254	= $2,559,805
Base bridge hours	÷ 7,320	÷ 5,097
Base cost per bridge hour	= $189.11	= $502.22

TABLE 4—TOTAL ECONOMIC COST FOR BASE PERIOD (2010), AREAS IN DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior
Base operating expense	$877,638	$428,384	$691,435
Base target pilot compensation	+ $1,632,191	+ $1,118,265	+ $1,428,167
Base return element	+ $35,106	+ $12,852	+ $20,743
Subtotal	= $2,544,935	= $1,559,501	= $2,140,345
Base bridge hours	÷ 13,406	÷ 3,259	÷ 11,630
Base cost per bridge hour	= $189.84	= $478.52	= $184.04

Step 2. Calculate the expense multiplier. In this step, for each Area, we add the base operating expense and the base return element. Then, we divide the sum by the base target pilot compensation to get the expense multiplier for each Area. Tables 5 through 7 show the Step 2 calculations.

TABLE 5—EXPENSE MULTIPLIER, AREAS IN DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario
Base operating expense	$578,569	$590,032
Base return element	+ $11,571	+ $17,701
Subtotal	= $590,140	= $607,733
Base target pilot compensation	÷ $1,677,397	÷ $1,020,120
Expense multiplier	0.35182	0.59575

TABLE 6—EXPENSE MULTIPLIER, AREAS IN DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI
Base operating expense	$541,103	$848,469
Base return element	+ $27,055	+ $33,939
Subtotal	= $568,158	= $882,408
Base target pilot compensation	÷ $816,096	÷ $1,677,397
Expense multiplier	0.69619	0.52606

TABLE 7—EXPENSE MULTIPLIER, AREAS IN DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior
Base operating Expense	$877,638	$428,384	$691,435
Base return element	+ $35,106	+ $12,852	+ $20,743
Subtotal	= $912,744	= $441,236	= $712,178
Base target pilot compensation	÷ $1,632,191	÷ $1,118,265	÷ $1,428,167
Expense multiplier	0.55921	0.39457	0.49867

Step 3. Calculate annual projection of target pilot compensation. In this step, we determine the new target rate of compensation and the new number of pilots needed in each pilotage Area, to determine the new target pilot compensation for each Area.

(a) Determine new target rate of compensation. Target pilot compensation is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. For pilots in undesignated waters, we approximate the first mates' compensation and, in designated waters, we approximate the master's compensation (first mates' wages multiplied by 150 percent plus benefits). To determine first mates' and masters' average annual compensation, we typically use data from the most recent AMOU contracts with the U.S. companies engaged in Great Lakes shipping. Where different AMOU agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

As of July 2010, there are two current AMOU contracts, which we designate Agreement A and Agreement B. Agreement A applies to vessels operated by Key Lakes, Inc., and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Both Agreement A and Agreement B will expire on July 31, 2011. Based on discussions with AMOU officials, these contracts are not expected to be negotiated until 2011. This does not provide sufficient time to incorporate new rates into the ratemaking process for the 2011 shipping season. The Coast Guard projects that when new AMOU contracts are negotiated in 2011, they would provide for a 3 percent wage increase effective August 1, 2011. This is in keeping with the recent contractual wage raises under the existing union contracts. Both 2009 and 2010 saw wage raises of 3 percent. Under Agreement A, we project that the daily wage rate would increase from $270.61 to $278.73. Under Agreement B, the daily wage rate would increase from $333.58 to $343.59. All other benefits and calculations for these contracts are forecasted to remain identical to the current AMOU contracts. The pension plan contribution, which has been a fixed amount, the 401k employers matching contribution of 5 percent of wages, which is also a set amount, and the monthly contract multipliers are all projected to remain fixed at current AMOU contract levels. These benefits have not changed their numerical or percentage values over the course of the previous AMOU agreements still in effect. We do not project that the 2011 contracts would have any impact on these fixed benefits.

To calculate monthly wages, we apply Agreement A and Agreement B monthly multipliers of 54.5 and 49.5, respectively, to the daily rate. Agreement A's 54.5 multiplier represents 30.5 average working days, 15.5 vacation days, 4 days for four weekends, 3 bonus days, and 1.5 holidays. Agreement B's 49.5 multiplier represents 30.5 average working days, 16 vacation days, and 3 bonus days.

To calculate average annual compensation, we multiply monthly figures by 9 months, the length of the Great Lakes shipping season.

Table 8 shows new wage calculations based on projected Agreements A and B to be effective as of August 1, 2011.

TABLE 8—WAGES

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
AGREEMENT A: $278.73 daily rate × 54.5 days	$15,191	$22,786
AGREEMENT A: Monthly total × 9 months = total wages	136,716	205,074
AGREEMENT B: $343.59 daily rate × 49.5 days	17,008	25,511
AGREEMENT B: Monthly total × 9 months = total wages	153,068	229,602

Both Agreements A and B currently include a health benefits contribution rate of $88.76. On average, this benefit contribution has increased at a rate of 10 percent per year throughout the lives of the existing five-year contracts. Accordingly, for purposes of the 2011 rate we project that when new AMOU contracts are negotiated in 2011, this contribution would increase to $97.64 effective August 1, 2011. We project that Agreement A would continue to include a pension plan contribution rate of $33.35 per man-day and that Agreement B would continue to include a pension plan contribution rate of $43.55 per man-day. Similarly, we expect both Agreements A and B to continue to provide a 5 percent 401K employer matching provision. Accordingly, for purposes of the 2011 rate, we will continue to use these values in calculating total pilot compensation. Currently, neither Agreement A nor Agreement B includes a clerical contribution that appeared in earlier contracts, and we project that this

would not be a feature of any new AMOU contracts negotiated in 2011. We project that the multiplier used to calculate monthly benefits would remain the same at 45.5 days.

Table 9 shows new benefit calculations based on projected Agreements A and B, effective August 1, 2011.

TABLE 9—BENEFITS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A: Employer contribution, 401(K) plan (Monthly Wages × 5%)	$759.53	$1,139.30
Pension = $33.35 × 45.5 days	$1,517.43	$1,517.43
Health = $97.64 × 45.5 days	$4,442.62	$4,442.62
AGREEMENT B: Employer contribution, 401(K) plan (Monthly Wages × 5%)	$850.38	$1,275.57
Pension = $43.55 × 45.5 days	$1,981.53	$1,981.53
Health = $97.64 × 45.5 days	$4,442.62	$4,442.62
AGREEMENT A: Monthly total benefits	= $6,719.58	= $7,099.35
AGREEMENT A: Monthly total benefits × 9 months	= $60,476	= $63,894
AGREEMENT B: Monthly total benefits	= $7,274.52	= $7,699.71
AGREEMENT B: Monthly total benefits × 9 months	= $65,471	= $69,297

TABLE 10—TOTAL WAGES AND BENEFITS

	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A: Wages	$136,716	$205,074
AGREEMENT A: Benefits	+ $60,476	+ $63,894
AGREEMENT A: Total	= $197,192	= $268,968
AGREEMENT B: Wages	$153,068	$229,602
AGREEMENT B: Benefits	+ $65,471	+ $69,297
AGREEMENT B: Total	= $218,539	= $298,900

Table 11 shows that approximately one third of U.S. Great Lakes shipping deadweight tonnage operates under Agreement A, with the remaining two thirds operating under Agreement B.

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT

Company	Agreement A	Agreement B
American Steamship Company		815,600.
Mittal Steel USA, Inc		38,826.
Key Lakes, Inc	361,385.	
Total tonnage, each agreement	361,385	854,426.
Percent tonnage, each agreement	361,385 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2762%.

Table 12 applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12—PROJECTED TARGET RATE OF COMPENSATION, WEIGHTED

	Undesignated waters	Designated waters
AGREEMENT A: Total wages and benefits x percent tonnage.	$197,192 × 29.7238% = $58,613	$268,968 × 29.7238% = $79,948.
AGREEMENT B: Total wages and benefits x percent tonnage.	$218,539 × 70.2762% = $153,581	$298,900 × 70.2762% = $210,055.
Total weighted average wages and benefits = projected target rate of compensation.	$58,613 + $153,581 = $212,194	$79,948 + $210,055 = $290,003.

(b) Determine number of pilots needed. Subject to adjustment by the Coast Guard Director of Great Lakes Pilotage to ensure uninterrupted service, we determine the number of pilots needed for ratemaking purposes in each Area by dividing each Area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters).

Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. Based on historical data and information provided by pilots and industry, we project that vessel traffic in the 2011

navigation season, in Districts 1 and 2, would remain unchanged from the 2010 projections noted in Table 13 of the 2010 final rule. In District 3, in both Areas 6 and 8, dropping bridge hours require the removal of two unused authorizations for pilots, one for each Area. There are no pilots currently in either of these slots and no jobs are being lost as a result of this action. The removal of these two pilot billets merely attempts to mitigate a significant downward trend across the undesignated waters of District 3. The bridge hours for the designated waters of Area 7, like Districts 1 and 2, would remain unchanged from the 2010 projections.

Table 13, below, shows the projected bridge hours needed for each Area, and the total number of pilots needed for ratemaking purposes after dividing those figures either by 1,000 or 1,800. As in the previous three annual ratemakings, and for the reasons described in detail in the 2008 final rule (74 FR 220 at 221–222), we rounded up to the next whole pilot except in Area 2 where we rounded up from 3.14 to 5, and in Area 4 where we rounded down from 4.07 to 4.

TABLE 13—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2011 bridge hours	Divided by 1,000 (designated waters) or 1,800 (undesignated waters)	Pilots needed (total = 38)
Area 1	5,203	1,000	6
Area 2	5,650	1,800	5
Area 4	7,320	1,800	4
Area 5	5,097	1,000	6
Area 6	11,606	1,800	7
Area 7	3,259	1,000	4
Area 8	9,830	1,800	6

(c) Determine the projected target pilot compensation for each Area. The projection of new total target pilot compensation is determined separately for each pilotage Area by multiplying the number of pilots needed in each Area (see Table 13) by the projected target rate of compensation (see Table 12) for pilots working in that Area. Table 14 shows this calculation.

TABLE 14—PROJECTED TARGET PILOT COMPENSATION

Pilotage area	Pilots needed (total = 38)	Multiplied by target rate of compensation	Projected target pilot compensation
Area 1	6	× $290,003	$1,740,018
Area 2	5	× 212,194	1,060,970
Area 4	4	× 212,194	848,776
Area 5	6	× 290,003	1,740,018
Area 6	7	× 212,194	1,485,357
Area 7	4	× 290,003	1,160,012
Area 8	6	× 212,194	1,273,164

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2. This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 shows this calculation.

TABLE 15—PROJECTED OPERATING EXPENSE

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense
Area 1	$1,740,018	× 0.35182	= $612,171
Area 2	1,060,970	× 0.59575	= 632,069
Area 4	848,776	× 0.69619	= 590,909
Area 5	1,740,018	× 0.52606	= 915,350
Area 6	1,485,357	× 0.55921	= 830,633
Area 7	1,160,012	× 0.39457	= 457,708
Area 8	1,273,164	× 0.49867	= 634,883

Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost. Based on data from the U.S. Department of Labor's Bureau of Labor Statistics available at *http://www.bls.gov/xg_shells/ro5xg01.htm,* we have multiplied the results in Step 4 by a 0.994 deflation factor, reflecting an average deflation rate of 0.6 percent between 2008 and 2009, the latest years for which data are available. Table 16 shows this calculation and the projected total economic cost.

TABLE 16—PROJECTED TOTAL ECONOMIC COST

Pilotage area	A. Projected operating expense	B. Increase, multiplied by deflation factor (= A × 0.994)	C. Projected target pilot compensation	D. Projected total economic cost (= B + C)
Area 1	$612,171	$608,498	$1,740,018	$2,348,516
Area 2	632,069	628,277	1,060,970	1,689,246
Area 4	590,909	587,364	848,776	1,436,140
Area 5	915,350	909,858	1,740,018	2,649,876
Area 6	830,633	825,649	1,485,357	2,311,006
Area 7	457,708	454,962	1,160,012	1,614,974
Area 8	634,883	631,074	1,273,164	1,904,237

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs. Table 17 shows this calculation.

TABLE 17—TOTAL UNIT COSTS

Pilotage area	A. Projected total economic cost	B. Projected 2011 bridge hours	Prospective (total) unit costs (A divided by B)
Area 1	$2,348,516	5,203	$451.38
Area 2	1,689,246	5,650	298.98
Area 4	1,436,140	7,320	196.19
Area 5	2,649,876	5,097	519.89
Area 6	2,311,006	11,606	199.12
Area 7	1,614,974	3,259	495.54
Area 8	1,904,237	9,830	193.72

Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the base period unit costs in Step 1. Table 18 shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results, for each Area, are identical with the percentage increases listed in Table 1.

TABLE 18—PERCENTAGE CHANGE IN UNIT COSTS

Pilotage area	A. Prospective unit costs	B. Base period unit costs	C. Percentage change from base (A divided by B; result expressed as percentage)
Area 1	$451.38	$435.81	3.57
Area 2	298.98	288.12	3.77
Area 4	196.19	189.11	3.75
Area 5	519.89	502.22	3.52
Area 6	199.12	189.84	4.89
Area 7	495.54	478.52	3.56
Area 8	193.72	184.04	5.26

We use the percentage change between the prospective overall unit cost and the base overall unit cost to increase rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420), and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428). This calculation is derived from the Appendix C ratemaking methodology found at 46 CFR 404.10, and differs from the area rate calculation by using total costs and total bridge hours for all areas. Tables 19 through 21 show this calculation.

TABLE 19—CALCULATION OF BASE PERIOD OVERALL UNIT COST

	A. Base period (2010) overall total economic costs	B. Base period (2010) overall bridge hours	C. Base period (2010) overall unit cost (A divided by B)
Sum of all Areas	$14,084,230	51,565	$273.14

TABLE 20—CALCULATION OF PROJECTED PERIOD OVERALL UNIT COST

	A. Projected period (2011) overall total economic costs	B. Projected period (2011) overall bridge hours	C. Base period (2011) overall unit cost (A divided by B)
Sum of all Areas	$13,953,996	47,965	$290.92

TABLE 21—PERCENTAGE CHANGE IN OVERALL PROSPECTIVE UNIT COSTS/BASE UNIT COST

	A. Prospective overall unit cost	B. Base period overall unit cost	C. Percentage change from overall base unit cost (A divided by B)
Across all Areas	$290.92	273.14	6.51

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. Table 22 shows this calculation.

TABLE 22—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS

	A. Base period rate	B. Percentage change in unit costs	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest dollar)
*Pilotage area	.....	(Multiplying Factor)		
Area 1:		3.57 (1.0357)		
—Basic pilotage	$17.73/km, $31.38/mi.	.....	$0.63/km, $1.12/mi.	$18.36/km, $32.50/mi.
—Each lock transited	$393	.....	$14.03	$407.
—Harbor movage	$1,287	.....	$45.95	$1,333.
—Minimum basic rate, St. Lawrence River	$858	.....	$30.63	$889.
—Maximum rate, through trip	$3,767	.....	$134.48	$3,901.
Area 2:		3.77 (1.0377)		
—6-hr. period	$861	.....	$32.46	$893.
—Docking or undocking	$821	.....	$30.95	$852.
Area 4:		3.75 (1.0375)		
—6-hr. period	$762	.....	$28.58	$791.
—Docking or undocking	$587	.....	$22.01	$609.
—Any point on Niagara River below Black Rock Lock	$1,498	.....	$56.18	$1,554.
Area 5 between any point on or in:	.....	3.52 (1.0352)		
—Toledo or any point on Lake Erie W. of Southeast Shoal	$1,364	.....	$48.01	$1,412.
—Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal.	$2,308	.....	$81.24	$2,389.
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River.	$2,997	.....	$105.49	$3,102.
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat.	$2,308	.....	$81.24	$2,389.
—Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat).	$4,020	.....	$141.50	$4,162.
—Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat).	$4,657	.....	$163.93	$4,821.
—Port Huron Change Point & Detroit River	$3,020	.....	$106.30	$3,126.
—Port Huron Change Point & Detroit Pilot Boat	$2,349	.....	$82.68	$2,432.
—Port Huron Change Point & St. Clair River	$1,670	.....	$58.78	$1,729.
—St. Clair River	$1,364	.....	$48.01	$1,412.
—St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat).	$4,020	.....	$141.50	$4,162.
—St. Clair River & Detroit River/Detroit Pilot Boat	$3,020	.....	$106.30	$3,126.
—Detroit, Windsor, or Detroit River	$1,364	.....	$48.01	$1,412.
—Detroit, Windsor, or Detroit River & Southeast Shoal	$2,308	.....	$81.24	$2,389.
—Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal.	$2,997	.....	$105.49	$3,102.
—Detroit, Windsor, or Detroit River & St. Clair River	$3,020	.....	$106.30	$3,126.
—Detroit Pilot Boat & Southeast Shoal	$1,670	.....	$58.78	$1,729.
—Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal.	$2,308	.....	$81.24	$2,389.
—Detroit Pilot Boat & St. Clair River	$3,020	.....	$106.30	$3,126.
Area 6:		4.89 (1.0489)		
—6-hr. period	$656	.....	$32.08	$688.
—Docking or undocking	$623	.....	$30.46	$653.

TABLE 22—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS—Continued

	A. Base period rate	B. Percentage change in unit costs	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest dollar)
*Pilotage area	.....	(Multiplying Factor)		
Area 7 between any point on or in:		3.56 (1.0356)		
—Gros Cap & De Tour	$2,559	.....	$91.10	$2,650.
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	$2,559	.....	$91.10	$2,650.
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap.	$964	.....	$34.32	$998.
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour.	$2,145	.....	$76.36	$2,221.
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap.	$964	.....	$34.32	$998.
—Sault Ste. Marie, MI & De Tour	$2,145	.....	$76.36	$2,221.
—Sault Ste. Marie, MI & Gros Cap	$964	.....	$34.32	$998.
—Harbor movage	$964	.....	$34.32	$998.
Area 8:		5.26 (1.0526)		
—6-hr. period	$578	.....	$30.40	$608.
—Docking or undocking	$549	.....	$28.88	$578.

* Rates for "Cancellation, delay or interruption in rendering services (§ 401.420)" and "Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)" are not reflected in this table but have been increased by 6.51% across all areas (*see* Table 21).

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. A draft Regulatory Assessment follows:

The Coast Guard is required to conduct an annual review of pilotage rates on the Great Lakes and, if necessary, adjust these rates to align compensation levels between Great Lakes pilots and industry. See the "Background" section for a detailed explanation of the legal authority and requirements for the Coast Guard to conduct an annual review and provide possible adjustments of pilotage rates on the Great Lakes. Based on our annual review for this proposed rulemaking, we are adjusting the pilotage rates for the 2011 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment.

This proposed rule would implement rate adjustments for the Great Lakes system over the current rates adjusted in the 2010 final rule. These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR Part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for deflation and projected changes in association expenses to maintain these compensation levels.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease would result in a cost reduction or savings for shippers in that area. The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The Coast Guard's interpretation is that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers. Coast Guard sampling of pilot data suggests there are very few U.S. domestic vessels, without registry and operating only in the Great Lakes, that voluntarily purchase pilotage services.

We used 2006–2008 vessel arrival data from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment to be 208 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the pilotage areas before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 208 vessels, there were approximately 923 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2006–2008 vessel data from MISLE.

The impact of the rate adjustment to shippers is estimated from pilotage revenues. These revenues represent the direct and indirect costs ("economic costs") that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the additional impact (costs or savings) of the rate adjustment in this proposed rule to be the difference between the total projected revenue needed to cover costs based on the 2010 rate adjustment and the total projected revenue needed to cover costs in this proposed rule for 2011. Table 23 details additional costs or savings by area.

TABLE 23—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE PROPOSED RULE BY AREA

[$U.S.; non-discounted]

	Total projected expenses in 2010	Change in projected expenses	Total projected expenses in 2011	Additional cost or savings of this rulemaking
Area 1	$2,267,537	1.0357	$2,348,516	$80,979
Area 2	1,627,853	1.0377	1,689,246	61,393
Area 4	1,384,253	1.0375	1,436,140	51,887
Area 5	2,559,805	1.0352	2,649,876	90,071
Area 6	2,544,935	0.9081	2,311,006	(233,929)
Area 7	1,559,501	1.0356	1,614,974	55,473
Area 8	2,140,345	0.8897	1,904,237	(236,108)

NOTES to Table 23:
Some values may not total due to rounding.
See "B. Calculating the Rate Adjustment" for further details on the rate adjustment methodology.
"Additional Cost or Savings of this Rulemaking" = "Total Projected Expenses in 2011" minus "Total Projected Expenses in 2010."

After applying the rate change in this proposed rule, the resulting difference between the projected revenue in 2010 and the projected revenue in 2011 is the annual impact to shippers from this rule. This figure would be equivalent to the total additional payments or savings that shippers would incur for pilotage services from this proposed rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this proposed rule to shippers varies by area. The annual costs of the rate adjustments range from $51,887 to $90,071 for most affected Areas. However, Areas 6 and 8 would experience annual cost savings of approximately $234,000 and $236,000, respectively. The annual savings is due to a projected decrease in the number of billeted pilots in Areas 6 and 8 from 2010 to 2011. This decrease in the number of pilots would reduce the projected revenue needed to cover costs of pilotage services in Areas 6 and 8.

To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators would pay more and some would pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost or savings reported above does capture all of the additional cost the shippers face as a result of the rate adjustment in this rule.

This proposed rate adjustment would result in a savings for Areas 6 and 8 that would outweigh the combined costs of the other areas. We measure the impact of this rulemaking by examining the changes in costs to shippers for pilotage services. With savings in Areas 6 and 8 exceeding the combined costs in other Areas, the net impact of this rulemaking would be a cost savings for pilotage services in the Great Lakes system. The overall impact of the proposed rule would be a cost savings to shippers of about $130,000 if we sum across all affected areas.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

We expect entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483–Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111–Deep Sea Freight Transportation, 483113–Coastal and Great Lakes Freight Transportation, and 483211–Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the proposed rule, we reviewed recent company size and ownership data from 2006–2008 Coast Guard MISLE data and business revenue and size data provided by Reference USA and Dunn and Bradstreet. We were able to gather revenue and size data or link the entities to large shipping conglomerates for 22 of the 24 affected entities in the United States. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants would be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the proposed rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes system. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees: approximately 65 total employees combined. We expect no adverse impact to these entities from this proposed rule because all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

Therefore, the Coast Guard has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b). If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the proposed rule so that they could better evaluate its effects on

them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Mr. Paul M. Wasserman, Chief, Great Lakes Pilotage Division, Commandant (CG–5522), U.S. Coast Guard, at 202–372–1535, by fax 202–372–1909, or by e-mail at *Paul.M.Wasserman@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism because States are expressly prohibited by 46 U.S.C. 9306 from regulating pilotage on the Great Lakes.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

2. In § 401.405, revise paragraphs (a) and (b), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$18.36 per kilometer or $32.50 per mile*.
Each Lock Transited	407*.
Harbor Movage	1,333*.

*The minimum basic rate for assignment of a pilot in the St. Lawrence River is $889, and the maximum basic rate for a through trip is $3,901.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$893
Docking or Undocking	852

3. In § 401.407, revise paragraphs (a) and (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$791	$791
Docking or Undocking	609	609
Any Point on the Niagara River below the Black Rock Lock.	N/A	1,554

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,389	$1,412	$3,102	$2,389	N/A
Port Huron Change Point	*4,162	*4,821	3,126	2,432	1,729
St. Clair River	*4,162	N/A	3,126	3,126	1,412
Detroit or Windsor or the Detroit River	2,389	3,102	1,412	N/A	3,126
Detroit Pilot Boat	1,729	2,389	N/A	N/A	3,126

*When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$688
Docking or Undocking	653

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Cap	Any harbor
Gros Cap	2,650	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	2,650	998	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,221	998	N/A
Sault Ste. Marie, MI	2,221	998	N/A

Area	De Tour	Gros Cap	Any harbor
Harbor Movage	N/A	N/A	998

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$608
Docking or Undocking	578

§ 401.420 [Amended]

5. In § 401.420—

a. In paragraph (a), remove the text "$119" and add, in its place, the text "$127"; and remove the text "$1,867" and add, in its place, the text "$1,989";

b. In paragraph (b), remove the text "$119" and add, in its place, the text "$127"; and remove the text "$1,867" and add, in its place, the text "$1,989"; and

c. In paragraph (c)(1), remove the text "$705" and add, in its place, the text "$751"; and in paragraph (c)(3), remove the text "$119" and add, in its place, the text "$127", and remove the text "$1,867" and add, in its place, the text "$1,989".

§ 401.428 [Amended]

6. In § 401.428, remove the text "$719" and add, in its place, the text "$766".

Dated: August 11, 2010.

Dana A. Goward,

Acting Director, Marine Transportation Systems Management, U. S. Coast Guard.

[FR Doc. 2010–20544 Filed 8–16–10; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0052; 92220–1113–0000C5]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Remove the Stephens' Kangaroo Rat From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to remove the Stephens' kangaroo rat (*Dipodomys stephensi*) from the Federal List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended. After a review of the best available scientific and commercial information, we find that delisting the Stephens' kangaroo rat is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Stephens' kangaroo rat or its habitat at any time. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on August 19, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2010–0052. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **ADDRESSES**); by telephone at 760–431–9440; or by facsimile at 760–431–9624. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that delisting the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal List of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish 12-month findings in the **Federal Register**.

Previous Federal Actions

We listed Stephens' kangaroo rat as endangered on September 30, 1988 (53 FR 38465). We published a draft recovery plan for the Stephens' kangaroo rat on June 23, 1997 (62 FR 33799; Service 1997, pp. 1–71), but it has not been finalized. The draft recovery plan provides recovery guidance and a benchmark for delisting the species (Service 1997, p. 53), consisting of:

(1) Establishment of a minimum of five reserves, one of which is ecosystem-based, in western Riverside County, California, that encompass at least 6,675 hectares (ha) (16,500 acres (ac)) of occupied habitat that are permanently protected, funded, and managed; and

(2) Establishment of two ecosystem-based reserves in San Diego County, California, one in the Western Conservation Planning Area and one reserve in the Central Conservation Planning Area, which are permanently protected, funded, and managed.

Neither criteria have been met at this time. Discussion of the criteria and their applicability are discussed in the *Recovery Planning and Implementation* section below.

On May 1, 1995, we received a first petition, dated April 26, 1995, from the Riverside County Farm Bureau (RCFB) requesting that the Stephens' kangaroo rat be removed from the Federal List of Endangered and Threatened Wildlife (in other words, delisted) under the Act.

The petition included supporting information stating that there were original data errors and that the assumptions used by the Service resulted in underestimating the numbers and range of the species and overestimating the amount of habitat lost. We acknowledged the receipt of the petition in a letter to the RCFB, dated June 12, 1995. On August 13, 1997, the RCFB sent us an inquiry regarding the status of the delisting petition and requesting clarification as to whether we had the funds or staff to respond with a 90-day finding on the petition. We sent a letter to the RCFB on August 26, 1997, stating that we were unable to review the petition and publish our 90-day finding due to limited resources. We also provided the RCFB with additional information concerning our Listing Priority Guidance for Fiscal Year 1997.

On February 25, 2002, we received a second petition from Mr. Robert Eli Perkins, without reference to his affiliation, dated February 22, 2002, to delist the Stephens' kangaroo rat. We sent a letter acknowledging the receipt of the second petition to Mr. Perkins on August 6, 2002. The second petition was nearly identical to the petition submitted by the RCFB in 1995, in that the 2002 petition provided the same information and requested the same action. We treated the second petition as a re-submittal of the first petition rather than a formal second petition.

On April 21, 2004, we announced our 90-day finding that the petition presented substantial information to indicate that the petitioned action may be warranted (69 FR 21567), and we initiated a status review of Stephens' kangaroo rat under section 4(b)(3)(A) of the Act. We also announced our intention to complete a 5-year review of the status of the species as required under section 4(c)(2)(A) of the Act. We requested scientific and commercial data and other information regarding the status of and threats to Stephens' kangaroo rat.

The Riverside County Farm Bureau filed a complaint on December 14, 2009 (CV 09–09162 CBM (OPx)) citing our failure to publish a 12-month finding on their petition to delist Stephens' kangaroo rat. We reached a settlement agreement with the plaintiffs on May 7, 2010, in which we agreed to submit to the **Federal Register** a 12-month finding on the plaintiff's petition by July 30, 2010.

This notice constitutes the 12-month finding on the February 25, 2002, petition (which we treated as a re-submittal of the May 1, 1995, petition) to delist the Stephens' kangaroo rat.

Species Information

Species Description and Taxonomy

Stephens' kangaroo rat (*Dipodomys stephensi* Merriam) is a small, nocturnal mammal. Kangaroo rats are more closely related to squirrels than mice or rats and constitute a distinct group of rodents belonging to the family Heteromyidae. Kangaroo rats are burrow-dwelling, seed-eating animals that inhabit arid and grassy habitats in western North America. They are characterized by fur-lined, external cheek pouches used for transporting seeds; large hind legs for rapid, bi-pedal, saltatorial (leaping) locomotion; relatively small front legs; long tails; and large heads.

Stephens' kangaroo rat was first described as *Perodipus stephensi* based on a specimen collected near Winchester, Riverside County, California (Merriam 1907, p. 78). As part of a major study of kangaroo rats in California, Grinnell (1919, p. 203; 1922, p. 7) found no good grounds for retaining the genus *Perodipus.* As a consequence of these findings, Grinnell (1921, p. 95) published the currently recognized name *Dipodomys stephensi.* The Integrated Taxonomic Information System (ITIS 2010, TSN 180247) and more recent checklists continue to recognize *Dipodomys stephensi* as a distinct species (Baker *et al.* 2003, p. 13; Bisby *et al.* 2010).

Geographic Range and Status

Stephens' kangaroo rat typically occurs at lower elevations in flat or gently rolling grasslands of the dry inland valleys west of the Peninsular Ranges of southern California, in western Riverside and northern and central San Diego Counties (Grinnell 1922, p. 67; Lackey 1967a, p. 315; Bleich 1973, p. 46; Bleich and Swartz 1974, pp. 208–210; O'Farrell *et al.* 1986, pp. 187–189; O'Farrell and Uptain 1989, p. 1; Pacific Southwest Biological Services, Inc. 1993, pp. 4–36; Ogden Environmental and Energy Services Co, Inc. (Ogden) 1997, p. 3). This historical range is small for rodents in general, and particularly for kangaroo rats (Price and Endo 1989, p. 294). At the time of listing in 1988, the Stephens' kangaroo rat's geographic range was reported as encompassing the Perris, San Jacinto, and Temecula Valleys in western Riverside County (Temecula Valley was mistakenly reported as located in San Diego County), and the San Luis Rey Valley in San Diego County (53 FR 38465). At listing, Stephens' kangaroo rat was known from 11 general areas, and, currently, Stephens' kangaroo rat is found in 15 areas (*see* Table 1 below).

TABLE 1—GEOGRAPHICAL AREAS OF KNOWN STEPHENS' KANGAROO RAT POPULATIONS AT LISTING (1988) AND AT PRESENT (2010)

	At listing	At present
Riverside County		
Kabian Park	known	considered nonviable.
Lake Mathews/Estelle Mtn	known	extant.
Lake Skinner/Domenigoni Valley	known	extant.
Motte Rimrock	known	extant.
Potrero Valley	known	extant.
San Jacinto/Lake Perris	known	extant.
Steele Peak	known	extant.
Sycamore Canyon/March Air Force Base (AFB)*	known	extant, Sycamore Canyon portion considered nonviable.
Corona/Norco	unknown	considered nonviable.
Anza/Cahuilla (i.e., Silverado Conservation Bank)	unknown	extant.
San Diego County		
Lake Henshaw	known	extant.

TABLE 1—GEOGRAPHICAL AREAS OF KNOWN STEPHENS' KANGAROO RAT POPULATIONS AT LISTING (1988) AND AT PRESENT (2010)—Continued

	At listing	At present
Ramona Grasslands	unknown	extant.
Rancho Guejito	unknown	extant.
MCBCP (Camp Pendleton)	known	extant.
Fallbrook	known	extant.

*The SKR Management Area on the former March AFB is not a reserve at this time (2010).

Populations of Stephens' kangaroo rat continue to persist in areas throughout the species' native range, despite fragmentation. Since listing, additional populations have been found near Corona/Norco and Anza/Cahuilla (*i.e.,* Silverado Conservation Bank) in western Riverside County, and Rancho Guejito and Ramona Grasslands in San Diego County, extending distribution records to the northwest, east, and south of areas known at the time of listing (Montgomery 1990, p. 3; Montgomery 1992, p. 3; Pacific Southwest Biological Services, Inc. 1993, pp. 4–39; Ogden 1997, p. 11). Although discovered after listing, it is likely the four additional populations were extant at the time of listing and were detected as a result of more focused surveys and consultations subsequent to listing. The populations identified after 1988 (subsequent to our listing of the species) are located near the periphery of the Stephens' kangaroo rat's known range at the time of listing and are considered new records of occurrence and not a range expansion of the Stephens' kangaroo rat.

To date, no rangewide assessment has been conducted to estimate the population size and indices of abundances (*e.g.,* minimum number alive index for Stephens' kangaroo rat across the species' range). Surveys for Stephens' kangaroo rat necessary to derive useful population estimates are difficult to conduct due to their nocturnal habits and limited time above ground (see Biology section below). In fact, very few studies have focused on the distribution of habitats and populations throughout the animal's range (Thomas 1975, p. 1; O'Farrell and Uptain 1989, p. 1), and much of the distributional information is in the form of unpublished presence or absence survey reports at particular sites from short-term live-trapping studies provided to landowners or public agencies (Price and Endo 1989, p. 294). More recent information has come from localized area-specific survey reports such as from Anza/Cahuilla and Potrero Valleys (Western Riverside Multiple Species Habitat Conservation Plan Biological Monitoring Program, April 2009). Because live-trapping methodologies vary and result in different capture probabilities, survey results across studies are difficult to interpret in terms of population estimates. However, such methodologies are useful for determining occupied habitat and detecting changes in species distribution.

Suitable Stephens' kangaroo rat habitat has been mapped and categorized using a variety of different classification schemes, including categories such as occupied, potentially occupied, and probably occupied. Although mapping of "occupied" habitat has been the most common method used for assessing the status of Stephens' kangaroo rat, it can be problematic, as not all areas have been mapped, and most areas have not been mapped over time to obtain information about trends in the extent of habitat occupied. More detailed and consistent survey information is needed to determine useful accurate and defensible estimates of populations and demographic trends for the Stephens' kangaroo rat rangewide (Diffendorfer and Deutschman 2003, p. 6).

For this 12-month status review and finding, we identified all areas occupied by Stephens' kangaroo rat at any point in time since the species was listed in 1988. Characterizations of these areas form the basis of our understanding of the known distribution of extant occurrences of Stephens' kangaroo rat throughout its range. We refer to these areas collectively as the "baseline Stephens' kangaroo rat occupied habitat" throughout this finding. The total baseline Stephens' kangaroo rat occupied habitat mapped for Riverside and San Diego Counties is 22,221 ha (54,909 ac). We consider this to be the most current and best available scientific information regarding the known distribution of occurrences and habitat of Stephens' kangaroo rat throughout the species' range. In the past, when conducting habitat and mapping exercises we have used a 100-meter grid to delineate habitat. Because of improved mapping techniques, for this baseline occupied habitat exercise, we mapped the areas as accurately as possible by more directly approximating the delineation of habitat areas rather than using a 100-meter grid to map habitat areas. We also digitized current data and information available to us from survey monitoring reports not previously available. We acknowledge that, due to varied mapping precision and accuracy, as well as data and resource constraints, there may be discrepancies between this and previous habitat acreage assessments.

Biology

Stephens' kangaroo rat constructs burrows to serve as sleeping quarters and nesting sites (Bleich 1973, p. 73). Burrows of Stephens' kangaroo rat are frequently found clustered in burrow complexes (Brock and Kelt 2004, p. 52). Burrow depths range between 23 and 46 centimeters (cm) (9 and 18 inches (in)), and multiple burrow openings may be adjoined. Burrow complexes consist of a network of tunnels connecting multiple entrances (Thomas 1975, p. 38; O'Farrell 1990, p. 78), with tunnel pathways corresponding to surface runways (O'Farrell and Uptain, 1987, p. 34). Individuals typically emerge from their burrows after sunset; they may be active at any time of night. However, O'Farrell (pers. comm. 1986) has observed that Stephens' kangaroo rats spend very little time (less than 1 hour) above ground each day and, when they are above ground, they move quickly between points.

Kangaroo rats, including Stephens' kangaroo rat, are primarily granivores (seed-eaters) and when above ground, spend most of their time moving about the surface, alternating between periods of locomotion with stops to extract seeds. Seeds are extracted from the soil by digging with their forefeet and balancing on their hind legs (Reichman and Price 1993, p. 541), by direct clipping of seed stalks and extracting seeds from the felled seed heads of fruit (Reichman and Price 1993, p. 542), or by harvesting seeds directly from fruit that lie within 15 to 20 cm (5.9 to 7.9 in) of the ground (Reichman and Price 1993, p. 543). Stephens' kangaroo rats often store large quantities of seeds, which they initially collect in their external cheek pouches and then transfer and

bury in burrows or surface caches for later consumption (Reichman and Price 1993, p. 543; Goldingay *et al.* 1997, p. 49). Seed caching may enable species of *Dipodomys* to survive during temporary shortages of food (Reichman and Price 1993, p. 543) or extreme seasonal fluctuations in food availability (Morgan and Price 1992, p. 2260). Although seeds are their primary food source, green vegetation and insects appear to be important seasonal food and water sources (Reichman and Price 1993, p. 540). Surface activity for Stephens' kangaroo rat changes through the year, reflecting seasonal rainfall and subsequent vegetative productivity (O'Farrell and Clark, 1987, p. 10). Previous studies on Stephens' kangaroo rat indicate that late spring to early summer breeding results in peak population recruitment in August (Lackey 1967b, p. 625; Bleich 1977, p. 1; O'Farrell and Clark 1987, p. 11).

The average litter size for the Stephens' kangaroo rat ranges from 2.7 to 2.8 individuals (Lackey 1967b, p. 625; Price and Kelly 1994, p. 815). The timing of breeding for Stephens' kangaroo rat is highly variable, with reproduction likely triggered by the growth of vegetation subsequent to winter rain (McClenaghan and Taylor 1993, pp. 642–643; Price and Kelly 1994, p. 813). Studies on Stephens' kangaroo rat indicate a late spring to early summer breeding season (Bleich 1977, p. 1; McClenaghan and Taylor, p. 636), although females on occasion may remain reproductive until late fall as long as food resources are adequate (McClenaghan and Taylor 1993, pp. 642–643; Price and Kelly 1994, p. 813). Observations suggest the possibility for multiple litters during favorable conditions (O'Farrell and Clark 1987, p. 11).

Studies have estimated average Stephens' kangaroo rat survivorship in the wild to be between 4.5 to 6.6 months, with some individuals living for as long as 19 months (McClenaghan and Taylor 1991, p. 12; Price and Kelly 1994, p. 815). However, these estimates are probably low due to the limited timeframe of the studies and the inability to distinguish between actual mortality and emigration. Adults appear to have higher survival rates than subadults.

Home ranges for Stephens' kangaroo rat vary according to physical habitat features, season, food availability, population density, and gender. Efforts to characterize the home range size or movements of Stephens' kangaroo rat have primarily relied on live trapping (Thomas 1975, p. 7), or a combination of live trapping and radio telemetry, to characterize movement patterns (Kelly and Price 1992, p. 4; Price *et al.* 1994b, p. 931). Estimates for mean home ranges within a population vary between 0.02 and 0.13 ha (0.05 and 0.32 ac) (Thomas 1975, p. 49; Kelly and Price 1992, pp. 19–20). Home ranges generated from live-trapping data are likely to be underestimates for this species (Kelly and Price 1992, p. 12), because the presence of live traps likely changes how the Stephens' kangaroo rat moves within its home range.

Stephens' kangaroo rat is generally considered highly sedentary (Price *et al.* 1994b, p. 935), but in one instance, Price *et al.* (1994b, pp. 933–935) recorded an individual moving over 1.0 km (0.6 mi) between trapping grids. The median maximum distance moved by Stephens' kangaroo rat individuals between capture sites was within 29 m (96 ft) of the initial point of capture, with 18 m (58 ft) as the median distance moved between the first and last monthly home-range center (for individuals captured in 2 or more months). Juveniles and adults were found to maintain a home-range center of 30 m (98 ft) (Price *et al.* 1994b, p. 935). Males are more mobile than females, and lactating females are especially sedentary; dispersal distances are similar for adults and juveniles. O'Farrell (1993, p. 12) found that 40 percent of the population was mobile at any one time and, in contrast to Price *et al.* (1994b, pp. 933–935), observed some movements in excess of 396 m (1,300 ft) (O'Farrell 1993, p. 66). Dispersal distances are usually less than 500 m (1,641 ft) (Price *et al.* 1994, p. 936).

Habitat and Ecosystem

General habitat conditions for Stephens' kangaroo rat are described in the literature (Bleich 1977, p. 8; Lackey 1967, p. 331; Price *et al.* 1991, p. 180; Goldingay and Price 1997, p. 715; Service 1997, pp. 9–11). Studies have variously characterized habitat occupied by this species as "sparse vegetation, level or rolling topography, and soil that is neither extremely dense nor largely sand" (Lackey 1967, p. 318) or as consisting of annual grasslands with sparse cover of perennial shrubs (Price and Endo 1989, p. 294). The term "grassland" is a generalization of this species' preferred vegetation community; the Stephens' kangaroo rat appears to have a higher affinity for vegetation communities dominated by herbaceous plants (forbs) with a low density of grasses than for a vegetation community dominated by grasses (O'Farrell and Clark 1987, p. 10; O'Farrell and Uptain 1987, p. 9). Stephens' kangaroo rat prefers grassland communities dominated by forbs rather than by annual grasses, as annual forbs provide critical greens in the spring, furnish temporary cover, produce large seeds, and rapidly disintegrate after drying, resulting in substantial patches of bare ground (O'Farrell and Uptain 1989, p. 7; O'Farrell and Clark 1987, p. 10) that provide suitable conditions for the species' specialized mode of locomotion (Bartholomew and Caswell 1951).

Stephens' kangaroo rat reaches its highest densities in grassland communities dominated by forbs and characterized by moderate to high amounts of bare ground, moderate slopes, and well-drained soils (O'Farrell and Uptain 1987, pp. 35, 36; O'Farrell 1990, p. 80; Anderson and O'Farrell 2000, p. 12). Stephens' kangaroo rat has been found on 36 types of well-drained soils, and more than 125 soil types (Service 1996, p. 6) that are capable of supporting annual grasses mixed with forbs and shrub species.

Genetics

Genetic variability within and between populations of Stephens' kangaroo rat has been investigated based on allozyme (protein) variation (McClenaghan and Truesdale 1991 pp. 5–6, McClenaghan 1994, p. 12) and through DNA analysis (Metcalf *et al.* 2001, p. 1239). Analysis of allozyme variation indicates populations on Marine Corps Base Camp Pendleton (MCBCP) in San Diego County are genetically similar to populations in western Riverside County (McClenaghan 1994, p. 25). In contrast, mitochondrial DNA analysis (mtDNA) of 16 populations across the range of Stephens' kangaroo rat found a higher degree of genetic differentiation (derived characteristics) between occupied locations (Metcalf *et al.* 2001, p. 1239) than found by the above-referenced allozyme studies. Metcalf *et al.'s* (2001, p. 1238) results infer that gene flow might be restricted between three hypothesized regions of potential differentiation: North (corresponds to northwestern and northeastern Riverside County), central (corresponds to central western Riverside County), and south (corresponds to north and central San Diego County), and particularly between the south region and the north and central regions. However, based on inconclusive sample sizes from each population (2 to 5 individuals per population), geographic restriction in gene flow advanced by Metcalf *et al.* (2001, p. 1241) should be considered preliminary.

Recovery Planning and Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. We published a draft recovery plan for Stephens' kangaroo rat on June 23, 1997 (62 FR 33799) and requested public comment on that draft plan for 60 days, ending August 22, 1997. We have not yet prepared a final recovery plan.

Section 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation and survival of endangered and threatened species, unless we find that such a plan will not promote the conservation of the species. The Act directs that, to the maximum extent practicable, we incorporate into each plan: (1) Site-specific management actions that may be necessary to achieve the plan's goals for conservation and survival of the species; (2) objective, measurable criteria that, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list; and (3) estimates of the time required and the cost to carry out the plan. However, revisions to the List of Endangered and Threatened Wildlife (adding, removing, or reclassifying a species) must reflect determinations made in accordance with section 4(a)(1) and 4(b) of the Act. Section 4(a)(1) of the Act requires that the Secretary determine whether a species is endangered or threatened (or neither) because of one or more of five threat factors. Therefore, recovery criteria must indicate when a species is no longer endangered or threatened by the five factors. In other words, objective, measurable criteria, or recovery criteria, contained in recovery plans must indicate when an analysis of the five threat factors under section 4(a)(1) of the Act would result in a determination that a species is no longer endangered or threatened. Section 4(b) requires the determination made under section 4(a)(1) as to whether a species is endangered or threatened because of one or more of the five factors be based on the best available scientific and commercial data.

Thus, while recovery plans are intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. Determinations to remove a species from the List of Endangered and Threatened Wildlife made under section 4(a)(1) of the Act must be based on the best scientific and commercial data available at the time of the determination, regardless of whether that information differs from the recovery plan.

In the course of implementing conservation actions for a species, new information is often gained that requires recovery efforts to be modified accordingly. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. The Service may judge, however, that, overall, the threats have been minimized sufficiently, and the species is robust enough to reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, planning, implementing, and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan.

Thus, while the recovery plan provides important guidance on the direction and strategy for recovery, and indicates when a rulemaking process may be initiated, the determination to remove a species from the List of Endangered and Threatened Wildlife is ultimately based on an analysis of whether a species is no longer endangered or threatened. The following discussion provides a brief review of recovery planning for Stephens' kangaroo rat, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the species.

The draft recovery plan identified a proposed recovery strategy based on the conservation of two types of reserves for the Stephens' kangaroo rat:

(1) Ecosystem-based reserves that are not isolated from large expanses of natural habitat and are anticipated to retain their biological diversity, thus needing only low levels of management; and

(2) Non-ecosystem-based reserves that are biologically isolated for the most part from large expanses of natural habitat and are anticipated to lose biological diversity, thus needing high to intensive levels of management.

The proposed recovery strategy recognized the importance of conserving both types of reserves (i.e., sufficient habitat) to maintain genetic and phenotypic diversity, to conserve representative populations of the species, and to provide redundancy in conserved populations to protect against catastrophic events that could extirpate the species from a significant portion of its range (Service 1997, pp. 48–49; *see* Factor A, D, and E discussions below). While this strategy for the conservation and recovery of Stephens' kangaroo rat is, in concept, still applicable and reflective of the approach the Service has used to guide conservation of Stephens' kangaroo rat, the recovery criteria and objectives as outlined in the 1997 draft recovery plan have not been revised to reflect information provided during public comment or to incorporate new and updated information generated since then. In addition, the goals and recovery criteria are ecosystem-based, and, while this approach generally addresses threats to the species, it does not provide explicit detail or guidance on determining whether threats have been ameliorated. Because ecosystem-based recovery actions are likely insufficiently detailed to address current and emerging threats (*see* Factor A and E discussions below), especially given new scientific information, this suggests the need to reevaluate the recovery strategy and criteria for Stephens' kangaroo rat. In addition to current conservation efforts, additional management approaches may be needed to maintain sufficient habitat requirements for the species' long-term survival. Further, the draft recovery plan's criteria do not identify population or demographic goals that would indicate that actions to ameliorate specific threats have been effective in ensuring the persistence of Stephens' kangaroo rat throughout its range in the foreseeable future. Despite the limitations discussed above, we consider the draft recovery plan to serve as an important document that sets out conservation goals for Stephens' kangaroo rat.

As discussed earlier, the 1997 draft recovery plan recommended the following objectives and criteria for delisting the Stephens' kangaroo rat (Service 1997, p. 53):

(1) Establishment of a minimum of five reserves, of which one is ecosystem-based, in western Riverside County that

encompass at least 6,675 ha (16,500 ac) of occupied habitat that are permanently protected, funded, and managed (refer to *Western Riverside County—Stephens' Kangaroo Rat Habitat Conservation Plan (HCP)* under Factor A below); and

(2) Establishment of two ecosystem-based reserves in San Diego County, one in the Western Conservation Planning Area and one reserve in the Central Conservation Planning Area, that are permanently protected, funded, and managed (refer to *San Diego County* sections under Factor A below).

The goal of Criterion 1, conserving at least 6,675 ha (16,500 ac), is linked to addressing the primary threat of habitat loss through urbanization. Criterion 2 is linked to threat of habitat loss and fragmentation and deleterious effects of small population size for the Stephens' kangaroo rat through conserving the geographic distribution, and phenotypic and genetic diversity, of the species across its known range.

Criterion 1

The primary objective identified in the draft recovery plan is to protect and maintain sufficient populations and habitat of the Stephens' kangaroo rat to allow the removal (delisting) of this species from the Federal List of Threatened and Endangered Wildlife under the Act (Service 1997, p. 52). At the time of listing, the primary threat to the Stephens' kangaroo rat was direct habitat loss due to urban and agricultural development. The goal of Criterion 1, conserving at least 6,675 ha (16,500 ac), is linked to addressing the primary threat of habitat loss through urbanization. However, because smaller, more isolated, non-ecosystem-based reserves were expected to be inherently unstable due to their configurations and current or future isolation from surrounding natural habitat due to the then existing or anticipated development, they were expected to require intensive management (Service 1997, p. 54). Additionally, establishing a minimum of three ecosystem-based conservation units (Service 1997, p. 54), one ecosystem-based conservation unit in western Riverside County (Criterion 1) and two in San Diego County (Criterion 2, *see below*) was thought appropriate to address the deleterious effects of diminishing biological diversity associated with small, biologically isolated reserves. Because western Riverside County was the area where Stephens' kangaroo rat was most threatened by existing and future urbanization, the maintenance of habitat quality and suitability there was considered essential for the conservation of this species (Service 1997, p. 49).

Since drafting Criterion 1 in 1997, we have worked with private landowners and local, State, and Federal partners to develop and implement actions to reduce threats and provide for the long-term conservation of the Stephens' kangaroo rat. The primary mechanism for implementing recovery actions for the Stephens' kangaroo rat has been through a regional habitat conservation plan in western Riverside County called the Riverside County Habitat Conservation Agency's Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County (the HCP) (*see Western Riverside County—Stephens' Kangaroo Rat Habitat Conservation Plan (HCP)* below). Through this regional HCP (and other cooperative management agreements and conservation plans), a Stephens' kangaroo rat core reserve system, plus additional lands for the benefit of Stephens' kangaroo rat, is now dedicated to the conservation of the Stephens' kangaroo rat in western Riverside County.

Based on our analysis of baseline Stephens' kangaroo rat occupied habitat within the western Riverside County HCP area (Service 2010; *see* Table 2 below), the Stephens' kangaroo rat core reserves (not including the Potrero Valley or March Air Force Base portion of the Sycamore Canyon/March Air Force Base Reserve) encompass 4,971 ha (12,568 ac) of baseline occupied habitat. Including Potrero Valley lands, 5,911 ha (14,606 ac) is currently in conservation within western Riverside County. Although management is required, Potrero Valley lands could serve to meet the ecosystem-based reserve portion of this criterion. These protected areas of baseline occupied habitat capture the geographic distribution of Stephens' kangaroo rat within western Riverside County. While the acquisition of lands in Stephens' kangaroo rat core reserves has largely ameliorated the threats of habitat loss due to urban development identified at the time of listing, Criterion 1 also specifies that these reserves be permanently protected, funded, and managed to maintain habitat suitability and ensure the long-term survival of Stephens' kangaroo rat. These components of Criterion 1 have yet to be fully implemented (*see* following discussion and *Western Riverside County—Stephens' Kangaroo Rat Habitat Conservation Plan (HCP)* section below).

Endowments for management of four of the core reserves (Lake Mathews/Estelle Mountain, Lake Skinner/Domenigoni Valley, Motte Rimrock, and Potrero Valley) and for Sycamore Canyon Wilderness Park are provided either through the Metropolitan Water District of Southern California, the HCP, or the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The 1997 draft recovery plan indicated intensive management of non-ecosystem-based reserves in western Riverside County would be required, but the draft plan did not identify specific goals or objectives to assess the effectiveness of management and to evaluate the response of populations of Stephens' kangaroo rat to management actions. As discussed under the Factor A analysis below, recent surveys (dates range from 1991 to 2006) indicate that the amount of occupied habitat on some of the Stephens' kangaroo rat core reserves has decreased over time, and monitoring efforts are not yet sufficient to determine Stephens' kangaroo rat population trends within the 5,911 ha (14,606 ac) of conserved baseline occupied habitat. This indicates that current management may not be effective and that further monitoring is needed to evaluate the effectiveness of ongoing conservation efforts. Therefore, we conclude that the primary goal of Criterion 1 for delisting as described in the 1997 draft recovery plan has not yet been fully met.

Criterion 2

Criterion 2 for delisting recommends the establishment of two ecosystem-based reserves, one in western and one in central San Diego County that are permanently protected, funded, and managed. The draft recovery plan defines an ecosystem-based reserve as "not isolated from large expanses of natural habitat" and needing "only minimal management due to the integrity of the natural system."

Criterion 2, similar to Criterion 1, was meant to address the threat of habitat loss to the Stephens' kangaroo rat and to conserve the geographic distribution, and phenotypic and genetic diversity, of the species. Criterion 2 is linked to the threat of habitat loss and fragmentation and to the deleterious effects of small population size for the Stephens' kangaroo rat through conserving the geographic distribution, and phenotypic and genetic diversity, of the species across its known range. Since the draft recovery plan was written, additional populations have been discovered in Ramona Grasslands and Rancho Guejito (*see* Geographic Range and Status section above). Additionally, Criterion 2 was developed to guard against the deleterious effects of diminishing biological diversity associated with

small, biologically isolated reserves (*see* Small Geographic Range and Population Size under Factor E below) by establishing larger ecosystem-based reserves.

The 1997 draft recovery plan did not, however, identify an acreage requirement in its definition of an ecosystem-based reserve. Rather, the draft plan indicated that ecosystem-based reserves should be surrounded by large expanses of natural habitat, which would allow them to retain their biological diversity and require only minimal management to promote the relatively rapid recovery of Stephens' kangaroo rat in the wild (Service 1997, p. 49). Based on our analysis of baseline Stephens' kangaroo rat occupied habitat in San Diego County (Service 2010), only populations of Stephens' kangaroo rat at Lake Henshaw, at Rancho Guejito, or on Camp Pendleton and Detachment Fallbrook are likely large enough or are surrounded by sufficient natural habitat to meet this criterion, and currently none of these areas are permanently protected and managed (*see* discussion under Factor A below).

The Stephens' kangaroo rat occupied habitat and surrounding natural lands on Camp Pendleton and Detachment Fallbrook may meet the intent of the draft recovery plan for an ecosystem-based reserve in western San Diego County. However, as discussed below under our Factor A analysis below, most areas of known Stephens' kangaroo rat occupied habitat are threatened by habitat degradation from encroachment of nonnative grasses and succession to more shrub-dominated communities, and even the largest Stephens' kangaroo rat populations may not be sustained over the long term without high to intensive management. Thus, we conclude that the criterion to establish ecosystem-based reserves that are protected, funded, and managed within western or central San Diego County has not been met.

Our review of the recovery criteria from the draft recovery plan for Stephens' kangaroo rat indicates that while both types of reserves have been established that help to ameliorate the threat of urban development, the criteria have not been fully met because management necessary to maintain habitat suitability is not yet in place. We also conclude that while the criteria appropriately indicate the need for habitat protection and intensive management of reserves, they are outdated and no longer adequately address the current threats to the species discussed below.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations (50 CFR 424), set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original scientific data used at the time the species was classified were in error.

In making this finding, information pertaining to the Stephens' kangaroo rat in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12-month finding on the petition we considered and evaluated the best available scientific and commercial information.

The petition did not contain substantial information regarding the biological status of Stephens' kangaroo rat or provide significant new information as to current or future threats to the species. Additionally, the petition did not provide a comprehensive review of the status of the species or provide evidence suggesting that the original listing was in error.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The 1988 listing rule identified widespread habitat loss and a fragmented distribution of the species due to historical agriculture practices and urban development as primary threats to the Stephens' kangaroo rat (53 FR 38465, September 30, 1998). We considered urban and agricultural development, grazing, and off-highway vehicles (OHVs) to be significant and potentially rangewide threats to the long-term persistence of Stephens' kangaroo rat at that time. These threats continue for Stephens' kangaroo rat predominantly through habitat modification and curtailment impacts, compared to direct habitat loss.

The 2002 petition did not present any significant new information regarding the present or threatened destruction, modification, or curtailment of habitat and range of the species.

Habitat Destruction and Modification by Urbanization and Land Use Conversion

The habitat and range of Stephens' kangaroo rat has been reduced over time. The species likely once occurred throughout annual grassland or sparse coastal sage scrub communities of the Perris and San Jacinto Valleys and up adjoining washes in southern California. As flat lands were developed or converted into agriculture, the species likely became isolated to low rolling hills and level ridge tops. With the arrival of Spanish ranchers and agrarian practices (*i.e.,* before 1938), native perennial bunchgrass vegetation was replaced by annual grasslands and ever since (*i.e.,* in the later portion of the 20th century) has been increasingly replaced by degraded annual grasslands (*see* Factor E discussion below). Price and Endo's (1989, p. 299) study revealed that the species suffered severe habitat loss and fragmentation throughout a core area of its range over the past century, due primarily to agricultural and urban development. In addition, O'Farrell and Uptain's (1989, p. 5) assessment of the population and habitat status of the Stephens' kangaroo rat throughout most of its range, which was available just after the 1988 listing, corroborated the threats from habitat loss and fragmentation to the species. They found that about 58 percent of previously known populations were extirpated due to human development and that many of the extant populations remained only in small and isolated areas. The petition asserted that we grossly over exaggerated the amount of habitat lost. However, the petitioner did not provide, and we do not possess, any new scientific or commercial data indicating that our original estimates of habitat loss were overestimations or were made in error.

In the 1988 final listing rule, we estimated the amount of suitable habitat (but not necessarily occupied habitat) for the Stephens' kangaroo rat prior to 20th-century agriculture was 124,775 ha (308,195 ac) in western Riverside County (53 FR 38467; Price and Endo

1989, p. 296). By 1984, the quantity of suitable habitat was reduced by approximately 60 percent to 50,518 ha (124,779 ac) (Price and Endo 1989, p. 296; 53 FR 38467). No similar estimates of reduction of suitable habitat for Stephens' kangaroo rat were available for San Diego County at that time, but we surmise a roughly equivalent magnitude of loss occurred concomitantly in San Diego County, given land use conversion to agriculture in the early 20th century throughout the grasslands of southern California.

Habitat modification and fragmentation involves both reduction in size and increased isolation of habitats. Most extant populations of Stephens' kangaroo rat were considered isolated from one another at the time of the species' 1988 listing and that pattern of fragmentation has been reinforced due to ongoing urbanization and land use conversions. Occupied Stephens' kangaroo rat sites, especially in the western portions of the range, have become increasingly isolated by surrounding urban and agricultural development. In some cases, occupied sites may be too fragmented to sustain viable populations of Stephens' kangaroo rat (Burke *et al.* 1991, pp. 28–29), suggesting that conservation of these smaller isolated populations may require enlarging patches of suitable habitat or connecting patches via conservation corridors. Similar to habitat loss, habitat fragmentation affects the persistence of populations or a species within habitat fragments (Wilcove *et al.* 1986, pp. 237–238, 246–252; Morrison *et al.* 1992, pp. 43–47; Noss *et al.* 1997, pp. 99–103; *see* Factor E discussion below).

Further, direct conversion of habitat by discing, burning, plowing, and grading, and wildfire suppression fuel reduction activities associated with human use and agricultural practices across the range of the species, can result in habitat degradation of suitable and occupied sites for Stephens' kangaroo rat. Deep discing may destroy the burrows of Stephens' kangaroo rat and degrade remaining vegetation. Although in some instances the open nature of plowed fields and farm access roads has been shown to encourage occupancy by the Stephens' kangaroo rat where fields are located near or adjacent to occupied habitat, we have little additional information to evaluate the potential frequency of reoccupation of abandoned agricultural lands or persistence of populations on abandoned agricultural lands. Moore-Craig (1984, p. 5) found that Stephens' kangaroo rats may recolonize a field within 8 months after cessation of cultivation. Although the threat of habitat loss and modification from agriculture land conversion was considered less severe than the threat of habitat loss from urbanization at the time of listing (because Stephens' kangaroo rats were found to reinvade plowed fields if the agricultural usage was abandoned (Thomas 1975, p. 46; 53 FR 38467)), the regularity and persistence of these recolonization events by Stephens' kangaroo rat on converted fields remains unknown. Information on the frequency of reoccupation of abandoned agricultural lands, long-term persistence of these populations on abandoned agricultural lands following a recolonization event, or the persistence of these lands as occupied habitat will require longer term and directed investigations. Regardless, agricultural practices may still provide a persistent source of nonnative vegetation and therefore remain an ongoing threat to suitability of habitat for Stephens' kangaroo rat that warrants future studies rangewide.

We estimated the baseline, from which to gauge recent impacts, Stephens' kangaroo rat occupied habitat for Riverside and San Diego Counties to be 22,221 ha (54,909 ac). Of that baseline, a total of 68 percent (15,059 ha/37,211 ac) is within Riverside County and 32 percent (7,162 ha/17,698 ac) is in San Diego County. As of 2006, a total of 1,433 ha (3,537 ac) of baseline Stephens' kangaroo rat occupied habitat was lost directly to development (see Table 2 below) in western Riverside and San Diego Counties. Though 1,414 ha (3,492 ac) were developed in Riverside County from 1984 to 2006 (Service 2010), impacts from direct habitat loss to urban development have mostly been ameliorated due to existing conservation efforts (*see Recovery Planning and Implementation* above, and Factor A and D discussions). In San Diego County, little baseline Stephens' kangaroo rat occupied habitat has been developed (19 ha/46 ac), although the potential for impact due to direct urban development remains high, especially if conservation efforts are not guaranteed (*see* Factor A and D discussions). Relative to previous discussions, it is important to note that not all baseline Stephens' kangaroo rat occupied habitat (22,221 ha/54,909 ac) is still currently occupied, and this represents only a small subset of the estimated amount of suitable habitat (50,518 ha/124,779 ac) for Stephens' kangaroo rat indicated in the 1988 listing rule.

TABLE 2—AMOUNT OF STEPHENS' KANGAROO RAT HABITAT OCCUPIED, DEVELOPED, AND CONSERVED IN RIVERSIDE AND SAN DIEGO COUNTIES

Location	Total area ha (ac)	BOH [1] ha (ac)	BOH lost to development ha (ac)	BOH conserved ha (ac)
Riverside County	1,890,263 (4,670,942)	15,059 (37,211)	1,414 (3,492)	6,275 (15,507)
Within the HCP [2]	223,470 (552,206)	12,568 (31,057)	1,071 (2,649)	4,971 (12,283)
Within MSHCP [3]	509,050 (1,257,889)	15,059 (37,211)	1,413 (3,492)	[4] 213 (526)
Potrero Valley	3,694 (9,128)	940 (2,323)	0	940 (2,323)
Johnson Ranch	272 (671)	1.9 (4.8)	0	1.9 (4.8)
Anza/Cahuilla	778 (1,922)	202 (500)	0	150 (370)
San Diego County	1,096,758 (2,710,148)	7,162 (17,698)	19 (46)	1,510 (3,932)
Lake Henshaw	NA	4,331 (10,702)	2.5 (6.3)	0
Ramona	NA	67 (166)	0	67 (166)
Rancho Guejito	NA	1,224 (3,024)	0	0
Camp Pendleton	50,692 (125,262)	422 (1,043)	0.1 (0.2)	422 (1,043)
Detachment Fallbrook	3,606 (8,910)	1,118 (2,762)	16 (39)	1,102 (2,722)

[1] Baseline Stephen's kangaroo rat occupied habitat (BOH).
[2] Western Riverside County Habitat Conservation Plan for the Stephens' Kangaroo Rat (HCP).
[3] Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).
[4] All lands under MSHCP, not just Additional Reserve Lands (ARL) lands.

Conservation Efforts

Several habitat conservation plans and other planning documents have been developed and implemented in western Riverside and San Diego Counties since 1988. These plans include: The Western Riverside County Habitat Conservation Plan for the Stephens' Kangaroo Rat (the HCP) and the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) in Riverside County, as well as the proposed San Diego North County Multiple Species Conservation Plan (North County MSCP), Marine Corps Base Camp Pendleton's (MCBCP) Integrated Natural Resources Management Plan, and the Naval Weapons Station Seal Beach (NWSSB) 'Detachment Fallbrook' Integrated Natural Resources Management Plan, all in San Diego County. Additional local conservation plans and partnerships or active management agreements in both Counties are ongoing within and outside the regional habitat conservation plans.

In western Riverside and San Diego Counties, existing conservation planning efforts have slowed the rate of unregulated loss of habitat to urban development and agricultural development. Currently, 36 percent, or 7,882 ha (19,477 ac) of the total baseline Stephens' kangaroo rat occupied habitat rangewide is conserved through regional habitat conservation plans and conservation easements. Although the intensity and magnitude of the threat from direct habitat loss for Stephens' kangaroo rat has been greatly diminished through ongoing implementation of habitat conservation plans and conservation processes in western Riverside County, and to a lesser extent in San Diego County, both habitat modification and curtailment are currently impacting the species. In considering the limitations and inadequacies (*see* Factor D discussion below) of ongoing efforts to implement or maintain adaptive management practices (not specifically mandated by a habitat conservation plan's terms and conditions), the duration and extent of habitat degradation and decreasing habitat quality remains a rangewide threat to the Stephens' kangaroo rat. Following is a discussion of the regional plans in effect and what they provide and do not provide regarding ongoing threats of habitat destruction and modification by urbanization and land use conversion.

Western Riverside County—Stephens' Kangaroo Rat Habitat Conservation Plan (HCP)

Since the 1988 listing of the Stephens' kangaroo rat, publicly reviewed, regional habitat conservation planning under section 10(a)(1)(B) of the Act has guided recovery for the Stephens' kangaroo rat, especially in western Riverside County. The HCP in western Riverside County provides for protection of "core reserves" and adaptive management of Stephens' kangaroo rat habitat in order to ameliorate impacts to the species from habitat fragmentation and degradation associated with development. The seven core reserves for the Stephens' kangaroo rat were assembled from a combination of State and federally owned lands, lands already in conservation (*e.g.,* in open space preserves or through conservation easements), lands acquired by the Riverside County Habitat Conservation Agency (RCHCA), and other cooperative partnerships (Table 3); Potrero Valley was added as a core reserve on December 29, 2003, and March Air Force Base was removed through an authorized land exchange (*see* Factor D discussion below).

TABLE 3—AREA CONSERVED BY CORE RESERVES UNDER THE STEPHENS' KANGAROO RAT HABITAT CONSERVATION PLAN (HCP) IN 1996. NOTE: POTRERO VALLEY WAS ADDED TO CORE RESERVE DESIGH LATER AND IS NOT INCLUDED IN TOTAL AT DESIGNATION IN 1996; 270 HA (667 AC) OF SYCAMORE CANYON REMAINS IN CONSERVATION BUT IS CONSIDERED NONVIABLE

HCP Core Reserve	In hectares	In acres
Lake Skinner/Domenigoni Valley	5,325	13,158.
Lake Mathews/Estelle Mountain	4,550	11,243.
San Jacinto/Lake Perris	4,424	10,932.
Sycamore Canyon/March Air Force Base	1,013	2,502.
Steele Peak	709	1,753.
Potrero Area of Critical Environmental Concern (ACEC)	403	995.
Motte Rimrock Reserve	258	638.
[Potrero Valley Reserve]	[approx 3,694]	[approx 9,128].
Total at designation in 1996	16,682	41,221.

Initiated with the "Short-Term" HCP in 1990, and continued with the approval in 1996 of the "Long-Term" HCP (which is the document we refer to as the HCP in this finding), the HCP was primarily envisioned to address the need to minimize loss of known occupied Stephens' kangaroo habitat in key localities (identified as "Study Areas" in the Short-Term HCP) and implemented as the seven core reserves in 1996.

On May 2, 1996, we completed an intra-agency biological opinion and issued an Incidental Take Permit for a 30-year term for the HCP under section 10(a)(1)(B) of the Act. The HCP required the conservation of 6,070 hectares (15,000 ac) of Stephens' kangaroo rat occupied habitat in seven core reserves within the 216,083-ha (533,954-ac) plan area and authorized, under section 10(a)(1)(B) of the Act, the loss of all of the remaining occupied Stephens' kangaroo rat habitat for development (6,070 hectares (15,000 acres)) (RCHCA 1996, p. S–6). The Western Riverside County Habitat Conservation Agency (RCHCA), along with eight member jurisdictions (Cities of Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Perris, Riverside, and Temecula), and unincorporated areas within the plan, are permittees.

Near the time of permit issuance, the HCP core reserve boundaries (*i.e.,* within the conserved 16,682 ha/41,221 ac) included 5,042 ha (12,460 ac) of Stephens' kangaroo rat occupied habitat, as reported by RCHCA (1996, p. S–9). In a biological opinion dated May 2, 1996, it was estimated that 11,307 acres of occupied Stephens' kangaroo rat occupied habitat fell within the seven core reserve boundaries. There is no dataset currently available to reliably quantify occupied habitat for Stephens' kangaroo rat within the core reserves; RCHCA, after years of incomplete monitoring efforts, developed a reserve-wide monitoring protocol in July 2006,

but it was suspended in 2007 (RCHCA 2007, p. 12). A newly revised monitoring protocol has been developed and is currently being implemented in four of the reserves in 2010 (Lake Skinner/Domenigoni Valley, Potrero Valley, Potrero ACEC, and San Jacinto/Lake Perris); adoption of the monitoring protocol is anticipated on the other core reserves in 2011 (Lake Mathews, Steele Peak, Motte Rimrock, and at Sycamore Canyon Wilderness Park) (Gail Barton pers. comm., May 2010).

The largest four core reserves (Lake Mathews/Estelle Mountain, San Jacinto/Lake Perris, Lake Skinner/Domenigoni Valley, and Potrero Valley) protect several different habitat types and provide for multiple species in addition to Stephens' kangaroo rat. Each of these core reserves therefore contains significantly more acreage than the baseline Stephens' kangaroo rat occupied habitat. In 1996, there was the recognition that the major Stephens' kangaroo rat populations across the species' range would remain fragmented and functionally isolated from one another due to existing urban development and topographic conditions that precluded restoration of natural connections once present under historical conditions. Thus, core reserves were expected to retain biological diversity across the known range of Stephens' kangaroo rat, and were anticipated to require intensive active management (Service 1997, p. 54).

Although losses to species and habitat were anticipated, and we stated such losses might reduce the viability of remaining populations, we determined in our biological opinion that permanent management of Stephens' kangaroo rat habitat to be conserved provided a reasonable assurance that Stephens' kangaroo rat populations within the HCP area would persist, and that implementation of the HCP was not likely to jeopardize the continued existence of the Stephens' kangaroo rat (Service 1996, p. 15). Issuance of the permit allowed the permanent loss of 50 percent of Stephens' kangaroo rat occupied habitat within the HCP area and the loss of 31 percent of the occupied habitat rangewide (Service 1996, p. 10).

Surveys indicate that some of the baseline occupied habitat within core reserves is no longer occupied by Stephens' kangaroo rat. Two core reserves with the largest amount of Stephens' kangaroo rat occupied habitat (Lake Mathews/Estelle Mountain (1,726 ha (4,264 ac)) and San Jacinto/Lake Perris (1,473 ha (3,640 ac))) experienced a decrease of 244 ha (602 ac) of Stephens' kangaroo rat occupied habitat by 2001 (RCHCA 2002, p. 1). Stephens' kangaroo rat is considered extirpated from 80 ha (197 ac) of the San Jacinto Wildlife Area due to degradation of habitat (Service GIS Data 2007, based on Paulek 2002, p. 2). Between 1990 and 1996, development at Kabian Park (466 ha (1,153 ac) of occupied habitat known at 1988 listing) resulted in significant habitat fragmentation and its elimination from core reserve designation. Measures to minimize the authorized take under the section 10 permits acknowledged conserving many of the largest remaining populations within the western Riverside portion of the range. The conservation strategy for the HCP was to capture a large enough habitat base within which Stephens' kangaroo rat populations could naturally expand and contract in response to environmental variability with the core reserves. Key was proper monitoring and management to conserve Stephens' kangaroo rat within the system of isolated reserves, and maintaining essential connectivity within and between reserves for the long-term maintenance of the ecosystem captured within the reserves (Service 1996, p. 13).

Recent surveys (dates range from 1991 to 2006) indicate that the amount of occupied habitat on some of the Stephens' kangaroo rat core reserves has decreased over time, and that monitoring efforts may still not be not sufficiently detailed to provide a reliable estimate of population sizes (and thereby amount of occupied habitat) across all reserves within the HCP (RCHCA 2007, p. 11; Difffendorfer and Deutschman 2003, p. 6). Further, recent annual reports from the HCP state that there are insufficient funds to maintain adequate boundary fencing or patrols around the core reserves (RCHCA 2008), suggesting the lack of enforcement ability (albeit voluntary) in some areas within the HCP area.

In 2003, lands within the Sycamore Canyon/March Air Force Base core reserve, including a 405 ha (1,000 ac) area known as the Stephens' kangaroo rat Management Area (SKR Management Area), were released from the core reserve for urban development. On August 27, 2009, the Center for Biological Diversity and San Bernardino Valley Audubon Society filed a complaint against the Service [Case No. 09–ev–1864 JAH POR (filed 8/27/09, S.D. Cal.)], alleging that the release of the SKR Management Area triggered the consultation requirements of section 7 of the Act, constituted a major Federal action significantly affecting the quality of the human environment requiring appropriate environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and was a material change to the HCP requiring a formal amendment to the section 10(a)(1)(B) permit. On April 22, 2010, a settlement agreement was filed with the Court, in which the Service agreed to rescind its December 29, 2003 approval of the release of the SKR Management Area. Upon the Service rescinding the release of the SKR Management Area, the SKR Management Area would be restored as a preserve under the HCP and would be subject to the restrictions applicable to preserve lands under the section 10(a)(1)(B) permit and the HCP. However, the settlement agreement has not been approved by the Court and is not currently in effect. Additionally, other parties filed motions to intervene in the lawsuit, and those motions are currently pending before the Court. Therefore, the conservation status of, and the threat of potential loss or destruction of the habitat in, the SKR Management Area is currently unknown. We believe that, regardless of the pending Court decision, the long-term recovery of the Stephens' kangaroo rat is neither compromised nor significantly enhanced by returning the SKR Management Area to the core reserve system.

Western Riverside County—Western Riverside County MSHCP

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) is a large-scale, multi-jurisdictional habitat conservation plan that addresses 146 listed and unlisted covered species, including Stephens' kangaroo rat, within a 510,000-ha (1.26 million-ac) plan area. Within the MSHCP area plan, there are sixteen County of Riverside Area Plans. The Service issued an incidental take permit on June 22, 2004 (Service 2004), under section 10(a)(1)(B) of the Act to 22 permittees under the MSHCP for a period of 75 years. The Western Riverside County Stephens' Kangaroo Rat HCP (see above) covers approximately 216,084 ha (533,954 ac) within the central portion of the MSHCP area and remains its own distinct habitat conservation plan. Thus, the MSHCP Conservation Area is 140,426 ha (347,000 ac) of existing natural and open space areas referred to as Public/Quasi-Public Lands (*e.g.,* State and County Park lands, Federal lands) within western Riverside County for the listed and unlisted species and complemented by an approximately 61,916 ha (153,000 ac) of new conservation lands ("Additional Reserve

Lands, or ARL"). The species-specific objectives for Stephens' kangaroo rat under the MSHCP are consistent with the requirements of the HCP to maintain a minimum of 6,070 ha (15,000 ac) of occupied Stephens' kangaroo rat habitat within the core reserves established by the HCP, and to expand the existing core reserves established by the HCP (*see* Factor D discussion below). Through cooperative management of these existing conserved lands in Western Riverside County (as provided for in the MSHCP's implementing agreement (IA); MSHCP IA, p. 57) a total of 7,875 ha (19,458 ac) of occupied Stephens' kangaroo rat habitat over the 75-year term of the MSHCP permit will be conserved when the MSHCP is fully implemented. We concluded in our biological opinion that implementation of the MSHCP was not likely to jeopardize the continued existence of the Stephens' kangaroo rat because of the avoidance, minimization, and mitigation measures, and associated monitoring and management incorporated into the MSHCP and for the conservation objectives set forth in the IA (Service 2004, p. 311). Based on the distribution of the Stephens' kangaroo rat and protection and management of the MSHCP Conservation Area, we concluded that habitat loss as described in the MSHCP would not result in an appreciable reduction in the numbers, reproduction, or distribution of the species throughout its range (Service, p. 311).

Although the precise configuration of the 61,916 ha (153,000 ac) of Additional Reserve Lands is neither mapped nor precisely identified in the MSHCP, textual descriptions within the bounds of a 125,453-ha (310,000-ac) Criteria Area that is interpreted through time as implementation of the MSHCP proceeds are expected. Based on the provisions of the MSHCP, Additional Reserve Lands of specific conservation value to Stephens' kangaroo rat will likely be added to these core reserves: Lake Mathews/Estelle Mountain, 519 ha (1,281 ac); Lake Skinner/Domenigoni Valley, 406 ha (1,003 ac); San Jacinto/Lake Perris, 56 ha (140 ac); Motte Rimrock, 41 ha (102 ac); Steele Peak, 292 ha (721 ac); and Potrero ACEC, 59 ha (146 ac). Beyond the already 6,276 ha (15,507 ac) of conserved habitat in western Riverside County, we expect that the ongoing implementation of the MSHCP will conserve an additional 1,501 ha (3,709 ac) of the baseline Stephens' kangaroo rat occupied habitat, including 1,246 ha (3,079 ac) that are linked to the existing reserves and 255 ha (630 ac) in a new reserve near Anza (Service 2010). The additional conservation of occupied habitat adjacent to the existing reserves and the addition of one new reserve will enhance the long-term viability of Stephens' kangaroo rat populations within western Riverside County.

Through 2008, 130 ha (323 ac), or 9 percent, of the Additional Reserve Lands (ARL "gains") that are linked to the Stephens' kangaroo rat core reserves have been acquired and conserved under the MSHCP (Service 2010). The MSHCP provides for monitoring and management on its Additional Reserve Lands, an increased level of monitoring on the core reserves established under the HCP, and the potential for acquisition of non-Stephens' kangaroo rat occupied habitat that abuts some Stephens' kangaroo rat populations near the edge of the reserves, thus providing a buffer to the effects of surrounding urbanization (see Factor D discussion below).

Additional Reserve Lands, both within and outside the MSHCP boundary, include habitat linked (*i.e.,* within 500 meters (1,640 ft)) to the existing Stephens' kangaroo rat core reserves (1,373 ha (3,393 ac)) and add one additional core area in the Anza/Cahuilla Valleys, which encompasses the Silverado Mitigation Bank (261 ha (645 ac)), and incorporates smaller scattered habitat patches throughout the MSHCP Conservation Area (541 ha (1,336 ac)) (Dudek 2003, Table 9–2, p. 9–96; Service 2004, p. 309; Service 2008a, p. 1). Additional Reserve Lands, which include baseline Stephens' kangaroo rat occupied habitat within 500 m (1,640 ft) of the Stephens' kangaroo rat core reserves, enhance the probability of long-term Stephens' kangaroo rat persistence within western Riverside County and are thus important to the recovery of the species.

Norco Hills, adjacent to the Santa Ana River in the City of Norco, was found to be occupied after the species was listed in 1988, and included approximately 405 ha (1,000 ac) of occupied and potentially occupied habitat (Dudek and Associates 2003, p. M–203). The Norco Hills population was considered to be important to the conservation of Stephens' kangaroo rat, but by 2004, the Norco Hills area was reduced by approximately 46 percent to an estimated 185 ha (457 ac) of highly fragmented habitat due to ongoing or pending development projects (Service 2004, p. 304). Offsite conservation to address these impacts was primarily concentrated at the Wilson Valley and Silverado Mitigation Banks. Subsequent to this development, the Norco Hills area was considered to no longer have long-term conservation value for the species, and as a result, it was discounted as a targeted area of conservation in the western Riverside County planning process.

The threat of direct habitat loss of Stephens' kangaroo rat habitat in western Riverside County from large-scale development (intense urbanization and land use conversion) is no longer the predominant threat to the species as stated in the final listing rule (53 FR 38465, September 30, 1988). Most, but not all, proposed projects in western Riverside County are limited to that permitted under either the HCP or the MSHCP. However, as the HCP and MSHCP do allow for continued, regulated development in Stephens' kangaroo rat occupied habitat, implementation of proposed and future development projects under the HCP and MSHCP will continue to result in the destruction and modification of Stephens' kangaroo rat habitat (suitable or occupied) within the plan areas. Additionally, successful management of the reserves is pivotal in avoiding declines in the Stephens' kangaroo rat populations within the core reserves and within the MSHCP plan area. Connectivity and proper monitoring and management were, and remain, essential to the long-term viability of the Stephens' kangaroo rat.

In summary, western Riverside County accounts for 68 percent, or 15,059 ha (37,211 ac), of total baseline occupied habitat mapped for this species. Of this, 6,276 ha (15,507 ac), or 41 percent, is currently held in conservation, and the remaining 59 percent has previously been impacted by urban development or may be subject to future loss, modification, or fragmentation from urban development.

San Diego County—Lake Henshaw and Ramona Grasslands

A majority of Stephens' kangaroo rat occupied habitat in central and north San Diego County is not conserved currently. The lands supporting Stephens' kangaroo rat population at Lake Henshaw are managed for water conservation by a local government agency, the Vista Irrigation District, and although they are likely to remain underdeveloped to protect the watershed and delivery potential of the agency's mission, to our knowledge there is no active management specifically targeting Stephens' kangaroo rat conservation; we currently know of no projects that would result in development or destruction of the Stephens' kangaroo rat habitat owned by the District. Studies indicate that this site likely supported the largest

remaining contiguous population of Stephens' kangaroo rat within the species' entire range, with an estimated 4,600 ha (11,367 ac) of suitable habitat occupied (O'Farrell and Uptain 1987, p. 10). The current status of this population in unknown and we are aware of no surveys in this area since 1990.

Currently conserved areas on public lands within San Diego County include Ramona Grasslands and Ramona Airport. Approximately 67 ha (166 ac) of baseline Stephens' kangaroo rat occupied habitat in the Ramona Grasslands have been conserved through efforts by local jurisdictions, by conservation organizations (The Nature Conservancy and others), or through a combination of public and private ventures. There remain a few pockets of development anticipated in Ramona Grasslands within baseline Stephens' kangaroo rat occupied habitat.

San Diego County—Military Lands and Integrated Natural Resources Management Plans (INRMPs)

Based on a recent analysis (Service 2010), we estimated approximately 1,540 ha (3,805 ac) of baseline Stephens' kangaroo rat occupied habitat on military lands at Marine Corps Base Camp Pendleton (MCBCP) and Naval Weapons Station Seal Beach Detachment Fallbrook (NWSSB Detachment Fallbrook, or "Detachment Fallbrook") are conserved through conservation planning agreements. This accounts for approximately 20 percent of the baseline Stephens' kangaroo rat occupied habitat in San Diego County. Both military installations have integrated natural resources management plans (INRMPs) and management actions specific to Stephens' kangaroo rat. INRMPs are based, to the maximum extent practicable, on ecosystem management principles and provide for the management of Stephens' kangaroo rat and its habitat while sustaining necessary military land uses.

MCBCP adopted an INRMP in 2001 that was revised in 2007 (Marine Corps 2007, pp. 4–1 to 4–117), and the U.S. Navy completed an updated INRMP for Detachment Fallbrook in 2006 (U.S. Navy 2006, pp. 4–1 to 4–130). These INRMPs are largely ecosystem-based, except where biological opinions under section 7 of the Act direct species-specific actions. The Service and Marine Corps are in consultation under section 7 of the Act on the Marine Corps' programmatic upland plan to avoid and minimize the effects of their activities on federally listed upland species, including Stephens' kangaroo rat, but the plan is currently not finalized. We anticipate that the species-specific conservation benefits for Stephens' kangaroo rat will outweigh all anticipated incidental take from various military training and facility management activities. Detachment Fallbrook's INRMP incorporated Stephens' kangaroo rat management practices described in the Wildland Fire Management Plan (U.S. Navy 2003), which underwent formal consultation with the Service (Service 2003, FWS–SD–3506.3). In addition to implementation of conservation and mitigation measures resulting from section 7 consultations, INRMPs, Range and Training Regulations (RTRs), and other planning documents serve to protect the species and its habitat on MCBCP and Detachment Fallbrook. Species-specific direction to guide ongoing Stephens' kangaroo rat conservation and management can be limited, as INRMPs may be superseded by the military's obligation to ensure readiness of the Armed Forces and are subject to discretionary funds and planning.

Land uses on MCBCP and Detachment Fallbrook pose a threat to Stephens' kangaroo rat habitat in localized areas where intense training, construction, or foot/off-highway vehicle traffic degrades, modifies, or fragments habitat. Current land use also increases risks of nonnative introduction and expansion, and soil compaction, which may threaten Stephens' kangaroo rat in portions of the military installations. Although adequately avoided and minimized, impacts to known occupied Stephens' kangaroo rat habitat may occur. Ongoing and potential threats to Stephens' kangaroo rat populations on MCBCP include project construction, military training activities (including off-road vehicle exercises), domestic cat predation, and successional processes (Service 1988; Price *et al.* 1995; Tetra Tech, Inc. 1999).

A Stephens' kangaroo rat monitoring program was implemented at Camp Pendleton from 1996 to 2002 (Montgomery *et al.* 1997, pp. 1–8; Montgomery 2005b, pp. 1–27), and updated in 2004 by the U.S. Geological Survey (Brehme *et al.* 2006, p. 3). The updated monitoring program is designed to assess trends in the amount of occupied habitat on the MCBCP and guide Stephens' kangaroo rat habitat management activities carried out under the INRMP.

Since the 1988 listing, the Marine Corps has formally consulted on military construction project impacts to about 14 ha (34 ac) of occupied or suitable Stephens' kangaroo rat habitat on MCBCP. As a result, the Marine Corps committed to offset the projected temporary and permanent impacts by establishing and managing the 21.5-ha (53.1-ac) SKR Management Area in the Juliet training area. Management of this site to maintain open habitat preferred by the Stephens' kangaroo rat is achieved through periodic burning with prescribed burn practices. This site is not set aside as a habitat preserve and therefore may be subject to subsequent training-related impacts over time.

It remains uncertain how ongoing military training affects Stephens' kangaroo rat on MCBCP. Training may be compatible with Stephens' kangaroo rat to some extent by promoting areas with limited vegetative cover, but training may also negatively affect Stephens' kangaroo rat by compacting soils, crushing burrows or individuals, or promoting invasive plants that degrade suitability of habitat for Stephens' kangaroo rat. Since the 1988 listing, the Marine Corps has instituted Range and Training Regulations that restrict ground-disturbing activities, off-highway vehicle use, and other training activities within occupied Stephens' kangaroo rat habitat (Marine Corps 2002). These restrictions are likely to have reduced incidence of Stephens' kangaroo rat mortality, disturbance, injury, or habitat degradation caused by training activities, although we anticipate some impact is probably occurring at a low rate.

Similar monitoring efforts for Stephens' kangaroo rat have been conducted at Detachment Fallbrook from 1990 to 1991 (Service 1993, p. 6), 2001 to 2002 (Montgomery *et al.* 2005, p. 3), and 2002 to 2007 (U.S. Navy 2006a, p. 1–4; U.S. Navy 2007). Since the 1988 listing, about 40 ha (99 ac) of occupied or suitable Stephens' kangaroo rat habitat has been impacted by various construction projects at Detachment Fallbrook (Service 1995, 2003). Most impacts related to construction projects have been offset by habitat enhancement at appropriate locations throughout Detachment Fallbrook. These sites, however, are not set aside as habitat preserves and therefore may be subject to subsequent impacts over time. An additional 25 ha (63 ac) of occupied and 35 ha (86 ac) of suitable Stephens' kangaroo rat habitat have been impacted by fire control actions (Service 1995, 2003).

Successional processes may be reducing the amount of available Stephens' kangaroo rat habitat on Detachment Fallbrook, thereby negatively affecting the Stephens' kangaroo rat population there. Removal of agriculture and military training

activities, reduced grazing, and lower fire frequencies may all have contributed to the filling in of open habitat suitable for Stephens' kangaroo rat, although quantification of this habitat loss and identification of processes involved have not been adequately studied. Because successional processes have been identified as negatively affecting Stephens' kangaroo rat, disturbances, including wildfires, prescribed fire, ungulate grazing, and mechanical vegetation reduction (discing), that open up habitat or remove above-ground vegetation in areas with soils suitable for Stephens' kangaroo rat may prove beneficial to this species.

San Diego County—North County Multiple Species Conservation Plan (MSCP) Planning Area and Rancho Guejito

A draft North County MSCP plan has the potential to contribute to the recovery of the Stephens' kangaroo rat in north San Diego County, excluding on military lands. A planning agreement for the North County MSCP plan is signed; the agreement may afford limited protection to Stephens' kangaroo rat and its habitat from discretionary development and construction impacts (NCCP Planning Agreement No. 2810–2007–00205), although these conservation measures cannot be assured because the proposed actions have been neither permitted nor proven effective. Rancho Guejito, which falls within the North County MSCP planning area, is privately owned and has approximately 1,219 ha (3,012 ac) of baseline Stephens' kangaroo rat occupied habitat. Recently, Rancho Guejito has been proposed for development. The Service and San Diego County have entered into discussions with the landowners of Rancho Guejito to address the conservation and development issues related to Stephens' kangaroo rat habitat. Rancho Guejito currently remains subject to ongoing development pressures.

Habitat Destruction and Modification by Nonnative Ungulates

Grazing (and associated impacts from crushing of burrows, trampling of habitat and soil compaction, introduction of nonnative grasses, and conversion to less suitable vegetation types) has historically impacted Stephens' kangaroo rat and its habitat rangewide. Grazing of grasslands associated either with commercial grazing activities or with grazing practices associated with habitat management activities (*i.e.,* under management plans specific to habitat conservation plans) has been, and remains, a land use practice in western Riverside and San Diego Counties. These two forms of grazing have potential for differential impacts to Stephens' kangaroo rat.

Grazing for commercial practice has been reduced significantly by urban development and fragmentation and from the change to dry land and citriculture farming. At the time of the 1988 listing, commercial grazing was conducted at high densities using both sheep and cattle, occurred year round, and was not managed for species conservation value for Stephens' kangaroo rat. Commercial grazing has since been reduced, and where such grazing still exists, impacts have been lessened compared to when the species was listed.

Grazing that is managed for the purpose of improving habitat quality for Stephens' kangaroo rat is currently practiced and is limited to certain geographic areas within Stephens' kangaroo rat occupied habitat. This form of grazing follows specific methodologies to avoid or significantly reduce any negative impacts for Stephens' kangaroo rat (*e.g.,* limited number of grazing animals, typically sheep; short duration (1 to 2 day consecutive maximum); and conducted in only certain seasons). Managed grazing practices are used by RCHCA at Lake Mathews/Estelle Mountain and Lake Skinner, and by the Bureau of Land Management and RCHCA at Steele Peak. Grazing is allowed on Federal lands at Detachment Fallbrook to control nonnative grasses or as a means of fire suppression (*e.g.,* fire breaks). Cattle grazing, however, has been temporarily halted on Detachment Fallbrook beginning in 2004. Although cattle grazing is projected to be re-initiated in 2010 (C. Wolf, Detachment Fallbrook, pers. comm. to M. Pavelka CFWO, May 11, 2009), lack of grazing in the interim has probably contributed to increasingly dense grasslands on Detachment Fallbrook that have inhibited Stephens' kangaroo rat's growth and movement. To offset the temporary loss of the beneficial aspects of cattle grazing, the Navy recently has conducted limited mechanical vegetation reduction activities to benefit Stephens' kangaroo rat on Detachment Fallbrook (Navy 2008a, b).

Commercial grazing for purposes other than habitat or vegetation management may still occur in some situations on private lands. Between 1987 and 1990, land management changes and a reduction in grazing pressure at the Lake Henshaw site appeared to promote a shift in the vegetation type that led to an estimated 90 percent decrease in the Stephens' kangaroo rat population (O'Farrell 1990, p. 81; O'Farrell, 1997, p. 31). Mostly due to the reduction in commercial grazing pressures, which in some cases was detrimental to habitat and in other cases was beneficial, we now consider grazing to no longer be a rangewide threat to Stephens' kangaroo rat, assuming grazing is adequately managed.

Habitat Destruction and Modification by Other Nonnative Species

Conversion of native vegetation to nonnative annual grassland is a potentially rangewide, high magnitude threat to Stephens' kangaroo habitat. Increased dominance of nonnative plant species, especially dense thatch-forming grasses and *Lepidium latifolium* (perennial peppergrass, or pepperweed) reduces habitat suitability, by reducing the abundance of forb-dominated grassland habitat preferred by this species, and by reducing necessary open bare-ground habitat. Similarly, the invasion of native perennial grasses (through land use practices) or conversion to dense stands of coastal sage scrub through natural succession can make the habitat less suitable for Stephens' kangaroo rat over time.

Several invasive, nonnative and native grasses can reduce or otherwise degrade Stephens' kangaroo rat habitat if they become established at high densities (O'Farrell and Uptain 1989, p. 7), because their plant materials do not rapidly break down after dying. The nonnative grasses *Schismus barbatus* (common Mediterranean grass) and *Vulpia myuros* (foxtail fescue) do not negatively influence habitat for Stephens' kangaroo rat, presumably because they do not form persistent dense mats like other nonnative grass species (*e.g., Bromus* spp. (brome)) (O'Farrell 1993a, p. 6; O'Farrell 1997, p. 18). Consequently, natural or artificial disturbances that remove or prevent the development of dense ground cover or succession of grassland communities to later stage shrub communities may be beneficial to Stephens' kangaroo rat (Price *et al.* 1994a, p. 9; O'Farrell 1997, p. 30). Nonetheless, too much disturbance (*e.g.,* severe fire intensity and excessive trampling) may be detrimental (Tetra Tech 1999, pp. 2–15; Haas and O'Farrell 2006, p. 34), particularly if a high proportion of individuals from a population perish from these disturbances. Thus, to maintain habitat suitability and occupancy by Stephens' kangaroo rat, in areas dominated by nonnative grasslands, regular management to

reduce grass density and thatch buildup is necessary.

Studies suggest that, when properly managed, certain disturbance activities such as grazing, brush removal, and natural and human-caused fires may reduce the threat of habitat modification from nonnatives and help to maintain the open habitat preferred by Stephens' kangaroo rat. Fire has been shown to be both beneficial and detrimental to Stephens' kangaroo rat. Price *et al.* 1995 (p. 15) found that at Lake Perris, populations of Stephens' kangaroo rat respond positively to fire-induced habitat alterations of areas less than 1 ha (2.8 ac). Additionally, patchiness on a relatively small spatial scale facilitates recolonization because immigration sources are nearby. Disturbance associated with fire may reduce thatch produced by nonnative species and contribute to the maintenance of bare ground required by the species (Price *et al.* 1995, p. 56). Prescribed fires can be employed to reduce invasive, nonnative and native plants; however, because most of the Stephens' kangaroo rat habitat is near urban and suburban areas in western Riverside County, use of prescribed fire is problematic and often incompatible with urban and suburban land uses.

There is concern that conversions of occupied habitat from forb-dominated grasslands, suitable for Stephens' kangaroo rat, to perennial bunch-grass-dominated grasslands, less suited to Stephens' kangaroo rat, have occurred throughout the species' range. Current and future active management may be required to maintain suitable forb-dominated grassland and avoid vegetation conversion or succession, such as the vegetation changes that occurred at Lake Henshaw. O'Farrell (1990, pp. 80–81) suggests that, unless intensive and sustained management is undertaken to avoid this type of habitat conversion and degradation to perennial bunch-grass-dominated grasslands or dense stands of coastal sage scrub, lower densities of Stephens' kangaroo rat will occur. Fragmentation of populations will result as patches of habitat become unsuitable, and will render Stephens' kangaroo rat populations much more vulnerable to extirpation. Currently, the Lake Henshaw site is not being managed to control nonnatives; however, with proper control of nonnatives, the Lake Henshaw site could represent approximately 5,100 ha (12,602 ac) of potentially occupied habitat, which would make it the largest, most contiguous, and potentially the most viable population of Stephens' kangaroo rat rangewide.

The main effect of invasive species is the decrease in habitat quality and available forage for Stephens' kangaroo rat. Some habitat may be lost due to nonnative (and native) grass invasion or coastal sage scrub conversion resulting in unsuitable habitat for the Stephens' kangaroo rat. Presumably a certain amount of invasive species is tolerable when held in check with disturbance activities such as certain grazing regimes, brush removal, and managed fires, but further investigations as to what frequency and intensity and degree of applicability are both ongoing and needed to determine the long-term benefit to Stephens' kangaroo rat. Currently, there is little active management of habitat occurring across the range of the species. The maintenance of habitat conditions that Stephens' kangaroo rat requires is essential for the conservation of this species (Service 1997, p. 49).

Habitat Destruction and Modification by Off-Highway Vehicles (OHVs)

At the time of the 1988 listing, OHV use was described as a factor that potentially reduces habitat suitability (53 FR 38467, September 30, 1988). OHVs directly damage plant communities, as well as the soil crust and the burrow systems of ground-dwelling species such as Stephens' kangaroo rat, thereby degrading the species' habitat (Bury *et al.* 1977, p. 16). Trespassing by OHVs negatively impacts Stephens' kangaroo rat at Steele Peak, Lake Mathews, and San Jacinto core reserves, and results in degradation of habitat. OHV trespassing and other encroachments, such as illegal trash dumping, trespassing on foot, vandalism, and encroachment by neighboring landowners, have been reported as a chronic problem (RCHCA 2001a, p. 9; RCHCA 2002a, p. 10; RCHCA 2004a, p. 10; RCHCA 2004b, p. 10; RCHCA 2006, p. 10). Efforts to curtail these activities have been limited and have not been successful due to lack of support for adequate patrols, limited available funding, differing land use policies of landowners within the core reserves, and lack of law enforcement capabilities by the reserves' managers. Overall, we consider OHV use to remain a threat to Stephens' kangaroo rat.

Summary of Factor A

At the time of listing, the major threat to Stephens' kangaroo rat habitat was rangewide loss, degradation, and fragmentation of habitat due to urban and agricultural development. However, since the species' 1988 listing, conservation measures, such as the development and successful implementation of habitat conservation plans, have reduced the magnitude of the threat of habitat loss due to urban and agricultural development throughout most of the range of the Stephens' kangaroo rat. Assembly of the core reserves under the HCP considered the isolation of small fragments of Stephens' kangaroo rat habitat at known localities at the time of listing. The successful implementation of habitat conservation plans has resulted in a total of 36 percent of baseline Stephens' kangaroo rat occupied habitat being conserved and protected from the threat of loss to urban development. However, urban development pressures remain on a significant portion of baseline occupied habitat within the range of Stephens' kangaroo rat.

We specified grazing as a significant rangewide threat to Stephens' kangaroo rat in the 1988 final listing rule (53 FR 38465). Since then, there has been a reduction in large-scale commercial grazing operations throughout the range of the species. As such, the impacts of grazing have been reduced across the range of the species such that now we do not consider grazing to be a rangewide threat. In some cases, moderate levels of grazing appear to be beneficial to Stephens' kangaroo rat habitat by maintaining an open vegetation structure, which is preferred by the species.

Most areas currently occupied by Stephens' kangaroo rat are threatened by habitat degradation from encroachment of nonnative grasses or loss of habitat due to the natural succession to more shrub-dominated communities. Invasion of nonnative grasses alter both the structure and composition of Stephens' kangaroo rat habitat by filling in open spaces and excluding forbs. This is a current and rangewide threat that is addressed by existing conservation plans (habitat conservation plans and integrated natural resources management plans) to manage for nonnative grasses and to reduce impacts to Stephens' kangaroo rat to ameliorate the effects on nonnative grasses. But, at this point in time, these plans are not managing sufficiently large areas to counteract the threat.

OHV use, with its resultant habitat degradation and loss, continues to be a threat to Stephens' kangaroo rat habitat. OHVs have negatively impacted Stephens' kangaroo rat at Steele Peak, Lake Mathews, and San Jacinto core reserves, and efforts to curtail illegal trespassing and other encroachments have had limited success. Inadequate boundary fencing and patrols around the core reserves have been attributed to

limited funding (RCHCA 2008, p. 13). OHV trespass on public and private lands is a known to threaten Stephens' kangaroo rat rangewide, but we do not currently know the magnitude of this threat.

Based on our review of the best scientific and commercial information, we conclude that Stephens' kangaroo rat habitat continues to be threatened by habitat degradation from urban development, nonnative species, and OHVs now and in the foreseeable future throughout the Stephens' kangaroo rat's range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the 1988 listing rule (53 FR 38465), the Service did not identify threats from overutilization. The petition did not provide information regarding this factor, and we do not have any new information to indicate that overutilization of any kind is a threat to Stephens' kangaroo rat now or in the foreseeable future.

Factor C. Disease or Predation

The 1988 final listing rule (53 FR 38465) stated that populations occupying fragmented habitat, such as Stephens' kangaroo rat, could be more easily extirpated from unpredictable natural catastrophes, such as disease outbreaks (53 FR 38468). However, at the time of listing, disease was not identified as a threat to Stephens' kangaroo rat, nor did the petition provide any information regarding this factor. We have no new information that suggests disease is a threat or would become a threat to the species in the foreseeable future.

In the 1988 listing rule, we did not find the threat from predation to be significant. However, we did express concern that predation of Stephens' kangaroo rat from domestic and feral cats on reserves adjacent to urban neighborhoods could increase as a result of urbanization (53 FR 38467). Fragmentation of habitat likely promotes higher levels of predation by urban-associated animals (*e.g.,* domestic cats) as the interface between occupied habitat and developed areas is increased. In addition, domestic cat densities along the boundaries of urban and natural areas can be artificially high where cat owners, by providing food, elevate cat populations far beyond carrying capacity (Crooks and Soule 1999, p. 565). Densities of domestic and feral cats are likely high near several core reserves near urban areas in western Riverside County and may require an active management approach to minimize predation and ensure that populations of Stephens' kangaroo rat on core reserves remain viable. Currently, there is no active management in place to eliminate or reduce potential predation from feral or domestic cats in western Riverside or San Diego Counties. To our knowledge, predation from feral or domestic cats is not known to be a significant threat to Stephens' kangaroo rat populations in San Diego County because the four extant populations exist in rural areas where feral or domestic cat densities are likely very low.

Summary of Factor C

We did not identify disease as a threat to Stephens' kangaroo rat in the final listing rule, nor did the petitioner provide any new substantive information. Based on our review of the best available scientific and commercial information, we found no evidence that disease is now or will become in the foreseeable future a threat to Stephens' kangaroo rat. We consider predation by feral and domestic cats to be a threat to the Stephens' kangaroo rat rangewide, and in particular in western Riverside County, now and in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

At the time of listing in 1988, regulatory mechanisms that afforded some protection for Stephens' kangaroo rat included: (1) California Endangered Species Act (the species was listed by California as threatened in 1971); (2) California Environmental Quality Act; (3) land acquisition and management by Federal, State, or local agencies or by private groups and organizations; and (4) local laws and regulations (53 FR 38465).

In the 1988 listing rule (53 FR 38468), we found that inadequate regulatory mechanisms place Stephens' kangaroo rat at risk. The status of regulatory mechanisms with an impact on Stephens' kangaroo rat has changed significantly since listing, with the addition of habitat conservation plans and agreements that conserve habitat occupied by Stephens' kangaroo rat. The petitioner asserts that, because of the extensive habitat preservation by the Riverside County Habitat Conservation Agency, delisting the species is warranted at this time. However, we believe that while habitat conservation plans provide significant species and habitat protection towards the recovery of the Stephens' kangaroo rat, significant threats remain that warrant the species' protection under the Act. The State and Federal regulatory mechanisms that aid in the conservation of the Stephens' kangaroo rat are described below.

State Protections

California Endangered Species Act (CESA)

Under provisions of the CESA, the California Fish and Game (CFG) Commission listed the Stephens' kangaroo rat as threatened in 1971. CESA includes prohibitions forbidding the "take" of Stephens' kangaroo rat (Chapter 1.5, Section 2080, CFG code). However, sections 2081(b) and (c) of CESA allow California Department of Fish and Game (CDFG) to issue incidental take permits for State-listed endangered and threatened species if:

(1) The authorized take is incidental to an otherwise lawful activity;

(2) The impacts of the authorized take are minimized and fully mitigated;

(3) The measures required to minimize and fully mitigate the impacts of the authorized take are roughly proportional in extent to the impact of the taking on the species, maintain the applicant's objectives to the greatest extent possible, and are capable of successful implementation;

(4) Adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and

(5) Issuance of the permit will not jeopardize the continued existence of a State-listed species.

As a delisted species, Stephens' kangaroo rat would continue to be protected by the CESA which affords protection at the State level for endangered and threatened species.

California Environmental Quality Act (CEQA)

CEQA is the principal statute mandating environmental assessment of projects in California. The purpose of CEQA is to evaluate whether a proposed project may have an adverse effect on the environment and, if so, to determine whether that effect can be reduced or eliminated by pursuing an alternative course of action or through mitigation. CEQA applies to projects proposed to be undertaken or requiring approval by State and local public agencies (*http://www.ceres.ca.gov/topic/env_law/ceqa/summary.html*). CEQA requires disclosure of potential environmental impacts and a determination of "significant effects" if a project has the potential to reduce the number or restrict the range of a rare or endangered plant or animal; however, projects may move forward if there is a statement of

overriding consideration. If significant effects are identified, the lead agency has the option of requiring mitigation through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA section 21002). Protection of listed species such as Stephens' kangaroo rat through CEQA is, therefore, dependent upon the discretion of the lead agency involved.

In the absence of its Federal status as an endangered species, CEQA has the potential to contribute to the protection of Stephens' kangaroo rat, but such protection is not assured since lead agencies are given discretion over whether to require impact minimization or mitigation measures. While CEQA requires the consideration of effects to Stephens' kangaroo rat and whether those effects can be reduced or eliminated, projects that adversely affect Stephens' kangaroo rat may still move forward. CEQA does not provide an adequate regulatory mechanism in the absence of listing under the Act to ensure effects to Stephens' kangaroo rat and its suitable or occupied habitat are avoided, reduced, or eliminated.

Natural Community Conservation Plans (NCCPs)

The NCCP program is a cooperative effort involving the State of California and numerous private and public partners to protect regional habitats and species. The primary objective of NCCPs is to conserve natural communities at the ecosystem scale while accommodating compatible land use, including urban development (*http://www.dfg.ca.gov/habcon/*). Natural Community Conservation Plans help identify and provide for the regional or area-wide protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity. Many NCCPs are developed in conjunction with habitat conservation plans prepared under the Act, including the HCP and the MSCHP. The HCP and the MSHCP are NCCP/habitat conservation plans. If the Stephens' kangaroo rat was delisted, the existing NCCPs, and the protections they provide, would remain in effect.

Federal Protections

Endangered Species Act of 1973, as Amended (Act)

Upon listing as endangered on September 30, 1988 (53 FR 38465), Stephens' kangaroo rat received benefit from the protections of the Act, which includes the prohibition against take and the requirement for interagency consultation for Federal actions that may affect the species. Section 9 of the Act prohibits the take of endangered wildlife without special exemption. The Service generally extends these prohibitions through regulations for threatened wildlife. The Act defines "take" as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Our regulations define "harm" to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Our regulations also define "harass" as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Section 7(a)(1) of the Act requires all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or adversely modify their critical habitat. Thus, listing the Stephens' kangaroo rat provided a variety of protections, including the prohibition against take and the conservation mandates of section 7 for all Federal agencies. These procedures and protections would not be required if we delisted Stephens' kangaroo rat, and significant reductions in recovery effort and protection would likely result. As a delisted species, Stephens' kangaroo rat would continue to be protected by the Lacey Act (18 U.S.C. 42 *et seq.,* and 16 U.S.C. 3371 *et seq.*), which prohibits trade in wildlife and plants that have been illegally taken, possessed, transported, or sold.

Under section 10(a)(1)(B) of the Act, the Service may issue "incidental take" (*i.e.,* taking of endangered species that is incidental to, but not the purpose of, carrying out of an otherwise lawful activity, 50 CFR 402.02) permits for listed animal species to non-Federal applicants, which provide exemptions to the take prohibitions under section 9 of the Act. To qualify for an incidental take permit, applicants must develop, fund, and implement a Service-approved habitat conservation plan that, among other requirements, details measures to minimize and mitigate the impact of such taking to listed species. Issuance of an incidental take permit by the Service is subject to the provisions of section 7 of the Act; thus, the Service is required to ensure that the actions to be covered by the habitat conservation plan are not likely to jeopardize the species or result in the destruction or adverse modification of critical habitat. As discussed under the Factor A discussion, there are two existing incidental take permits for Stephens' kangaroo rat. If the Stephens' kangaroo rat was delisted, the existing HCPs, and the protections they provide, would remain in effect. The HCP and the MSHCP are discussed below.

HCP (Western Riverside County)

The development of the Riverside County Habitat Conservation Agency's Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County (the HCP) was in response to the threat of habitat loss due to rapid urban and agricultural development in western Riverside County. The boundaries of the HCP encompass an area of approximately 216,084 ha (533,954 ac) located within western Riverside County and bordered on the north by the San Bernardino County line and on the south by the San Diego County line. The area is generally defined as territory west of the San Jacinto Mountains with National Forest Lands flanking the western and eastern boundaries (Cleveland and San Bernardino National Forests, respectively) (RCHCA 1996, p. 31). Core reserve areas are not protected in perpetuity under the HCP; however, the core reserves will be protected through the term of the permit, which expires in 2026. When the HCP's initial 30-year term expires in 2026, the permittees have expressed their intention to process an amendment to the MSHCP to allow coverage for the Stephens' kangaroo rat throughout the MSHCP's area. Additionally, the HCP's core reserves are included within the Conservation Area under the MSHCP. Therefore, we anticipate a continued conservation benefit to the species even after the HCP expires. The primary threat identified in the 1988 listing rule, habitat destruction from urban and agricultural development resulting in isolated habitat patches has been largely ameliorated or addressed in Riverside County through the creation of the core reserve system and the implementation of the overarching habitat conservation plans.

MSHCP (Western Riverside County)

The Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) contains species-specific

objectives for Stephens' kangaroo rat that augment the core reserve design system set forth in the HCP, which was the key document intended for the long-term conservation strategy for the Stephens' kangaroo rat. Incidental take of Stephens' kangaroo rat had already been permitted consistent with the HCP within the HCP boundary (or fee area). Additional terms and conditions within the MSHCP Conservation Area set forth three Objectives including: conservation of an additional 1,214 ha (3,000 ac) of Stephens' kangaroo rat occupied habitat, and that 30 percent of the total occupied habitat conserved within the MSHCP and HCP's areas would be maintained at a population of medium or higher density (*i.e.,* 5 to 10 individuals per hectare) with no single core area accounting for more than 30 percent of the conservation target (WRCMSHCP 2003, p. M–198). Recent scientific data indicates that these species-specific objectives may have not been met in terms of density or occupancy estimates either within the minimum two Core Areas outside the existing HCP boundary (WRMSHCP 2009, pp. 18–20), or, as previously discussed, within the HCP plan area (HCP core reserves), as no reliable density estimates are available to date. Until the species-specific objectives are met within the MSHCP plan area, threats due to habitat loss and fragmentation remain. Furthermore, while these threats are largely ameliorated within the plan boundary, the MSHCP is inadequate to address these threats rangewide.

Sikes Act

The Sikes Act (16 U.S.C. 670a) authorizes the Secretary of Defense to develop cooperative plans for conservation and rehabilitation programs, and to establish outdoor recreation facilities on military installations. The Sikes Act also provides for the Secretaries of Agriculture and the Interior to develop cooperative plans for conservation and rehabilitation programs (INRMPs, described below) on public lands under their jurisdiction. While the Sikes Act of 1960 was in effect at the time of the Stephens' kangaroo rat's 1988 listing, it was not until the Sikes Act's 1997 amendment (Sikes Act Improvement Act) that Department of Defense (DOD) installations were required to prepare integrated natural resources management plans (INRMPs). Consistent with the use of military installations to ensure the readiness of the Armed Forces, INRMPs provide for the conservation and rehabilitation of natural resources on military lands. They incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. While the implementation of INRMPs is subject to funding availability, they address the conservation of natural resources on military lands and can be an added conservation tool in promoting the recovery of endangered and threatened species, and other fish and wildlife resources, present on military lands.

The U.S. Marine Corps and the U.S. Navy have contributed to recovery efforts for Stephens' kangaroo rat on military lands in San Diego County through management and monitoring of Stephens' kangaroo rat populations. The Stephens' kangaroo rat populations at MCBCP and NWSSB Detachment Fallbrook are addressed under existing INRMPs and specific management and monitoring of these populations is a reasonable expectation; however, there is concern that Stephens' kangaroo rat occupied habitat may be reduced to less than one-third of the habitat identified in our baseline analysis (see Factor A discussion above). If the Stephens' kangaroo rat were no longer listed under the Act, we would expect management actions specific to maintaining Stephens' kangaroo rat populations at Camp Pendleton and Detachment Fallbrook to receive lower priority within their respective INRMPs. Although these INRMPs would likely continue to provide a benefit to the Stephens' kangaroo rat through the protection and management of habitat, these benefits would be subject to military funding allocations that generally give higher priority to management issues for endangered and threatened species (U.S. Marine Corps 2007, pp. 1–3).

National Environmental Policy Act (NEPA)

NEPA (42 U.S.C. 4321 *et seq.*) requires all Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions significantly affecting the human environment, including natural resources. NEPA documentation is provided in an environmental impact statement, an environmental assessment, or a categorical exclusion, and may be subject to administrative or judicial appeal. In cases where that analysis reveals significant environmental effects, the Federal agency must propose mitigation alternatives that would offset those effects (40 CFR 1502.14 and 1502.16). These mitigations usually provide some protection for listed species. However, NEPA does not require that adverse impacts be fully mitigated, only that impacts be assessed and the analysis disclosed to the public.

Summary of Factor D

Although various State and Federal laws provide some protection for Stephens' kangaroo rat and its habitat, the Act is currently the primary law providing protection for Stephens' kangaroo rat since its listing as a federally endangered species in 1988. Existing regulatory mechanisms have not protected the species from further losses of populations and habitat.

The primary tool for conserving the species has been the 1996 Riverside County Habitat Conservation Agency's Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County (the HCP); however, the monitoring and management protocols and practices are incomplete. The 2004 Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) has the potential to enhance the long-term persistence of Stephens' kangaroo rat within western Riverside County, but as a multi-species plan, it has dynamic conservation objectives and priorities, and in terms of the provisions addressing Stephens' kangaroo rat, the MSHCP has not been fully implemented at this time. The San Diego North County MSCP is still in draft form, and therefore assures no protection to the species at this time.

On military lands, integrated natural resources management plans (INRMPs) address the conservation of natural resources, including Stephens' kangaroo rat, and can be an added conservation tool in promoting the recovery of the species. Management practices under active INRMPs do provide guiding principles for preserving Stephens' kangaroo rat and its habitat while sustaining necessary military land uses.

In spite of the existing regulatory mechanisms, Stephens' kangaroo rat continues to be impacted by habitat modification and fragmentation due to urban and agricultural development, nonnative species, off-highway vehicles (OHVs), and the potential impacts associated with climate change. Current threats may be reduced or eliminated to insignificance through implementation of habitat conservation plans when appropriate adaptive management procedures are fully implemented. In summary, we conclude that significant rangewide threats remain and, absent the protections of the Act, the existing regulatory mechanisms (CEQA, CESA, NCCP, and NEPA) do not provide sufficient protections to provide for the long-term persistence of Stephens'

kangaroo rat now and in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

At listing, habitat for Stephens' kangaroo rat was severely reduced and fragmented by development and related activities in western Riverside County (53 FR 38467, September 30, 1988). At that time, we identified the following as Factor E threats: Nonnative grass succession (now discussed under Factor A, above), use of rodenticides, reduction in habitat size (now discussed as fragmentation under Factor A, above), and increased vulnerability to unpredictable catastrophic events due to small population size. After the 1988 listing, we identified climate change as a new threat to the species. Current Factor E threats impacting Stephens' kangaroo rat include rodenticides, small population size, and impacts of climate change.

Rodenticides

Pocket gophers (*Thomomys bottae*), California ground squirrels (*Spermophilus beecheyi*), and nonnative rodents are sometimes considered nuisance species on public and private lands. These species are sometimes targeted for control through use of anticoagulant rodenticides. Stephens' kangaroo rats use burrow networks of pocket gopher (*Thomomys bottae*) and California ground squirrels (*Spermophilus beecheyi*) (Michael Brandman Associates 1989, p. 7), and are thus at risk of being unintentionally poisoned by anticoagulant rodenticides meant to target nuisance species.

Baits containing anticoagulants are placed in and around burrows and may also be consumed by nontarget species, including Stephens' kangaroo rats. Use of rodenticides may have affected Stephens' kangaroo rat at State recreation areas that had rodent control programs and possibly at other locations where known Stephens' kangaroo rat populations have inexplicably disappeared. Direct ingestion of rodenticides at bait stations by Stephens' kangaroo rats can be ameliorated in part from the use of elevated bait stations (Whisson 1999, p. 176), and the baiting of traps during daylight hours when kangaroo rats are inactive. However, poison bait that falls to the ground or that is cached at ground level by targeted species still poses a threat to Stephens' kangaroo rat if ingested during nocturnal foraging or encountered in use of abandoned burrows.

To the best of our knowledge California State Parks (California Department of Parks and Recreation) no longer use rodenticides for rodent control within the Lake Perris State Recreation Area (Kietzer 2010). While we do not know the magnitude of the threat of rodenticide exposure, we do consider rodenticide use a rangewide threat to the Stephens' kangaroo rat as the second-generation anticoagulants (brodifacoum, bromadialone and difethialone) are commonly used as rodenticides targeting rats, mice, ground squirrels and other rodents and are found in many over-the-counter pest control products (Erickson and Urban 2004, pp. ii, 1). Based on an evaluation of the ecological risks associated with the use of bait products containing rodenticide active ingredients, the Environmental Protection Agency (EPA) is classifying many bait products as restricted-use pesticides. This will limit their use to certified applicators who have had sufficient training to know when and how to use the products to reduce the risk of nontarget organism exposure. EPA is also requiring modified and tamper-resistant bait stations, which are expected to reduce overall nontarget wildlife exposures and resulting adverse effects (Erickson and Urban 2004). These risk reduction measures should lower the potential for exposure now and in the future in both urban and rural areas adjacent to lands where Stephens' kangaroo rat overlaps with nuisance species (*e.g.,* at Lake Perris Reserve and in Ramona Grasslands) and near private agricultural lands, such as orchards and rangelands.

Small Geographic Range and Population Size

The best available scientific data suggest that Stephens' kangaroo rat is extant within a relatively restricted range within western Riverside and northern San Diego Counties. Small geographic range has been identified as the most important single indicator of elevated extinction risk in mammals (Purvis *et al.* 2000, p. 1949; Cardillo *et al.* 2006, pp. 4157–4158; Cardillo *et al.* 2008, p. 1445). The inherent vulnerability associated with small geographic range is due to the fact that a single localized threat, whether it is manmade (*e.g.,* development) or environmental (*e.g.,* increased and intense precipitation), can potentially impact the entire distribution of the species, resulting in an increased probability of extinction. Price and Endo (1989, p. 299) and O'Farrell and Uptain (1989, p. 5) verified that the majority of remaining Stephens' kangaroo rat populations occur in small, isolated areas (habitat patches) and are fragmented from a wider historical distribution.

Although fragmentation does not necessarily lead to extinction of a species within a habitat patch, small populations in small habitat patches have an increased likelihood of extinction and are increasingly affected by their surroundings (*e.g.,* edge effects such as physical effects differing at the boundaries of a patch and the interior of a patch) (Noss and Cooperrider 1994, pp. 51–54). Isolation compounds risks associated with small population size, because it reduces the chance that populations will naturally recover through immigration of dispersing individuals from nearby populations (Hanski 1994, p. 132), as has been documented for several Stephens' kangaroo rat populations (O'Farrell and Uptain 1989, p. 5; Shultz *et al.* 1991, p. 12). Theoretical predictions and empirical evidence indicate that smaller populations such as are found with Stephens' kangaroo rat tend to have higher mortality rates and reduced reproductive output, leading to demographic fluctuations and an increased susceptibility to environmental catastrophes (Lande 1988, pp. 1456–1458; Lacy 1997, p. 321; Frankham *et al.* 2002, pp. 24, 32). Small populations have a higher probability of extinction than larger populations, as their low abundance renders them susceptible to inbreeding, losses of genetic variability, and demographic problems (Lande 1988, p. 1455).

While populations of Stephens' kangaroo rat are small, we do not have any information regarding genetic fitness of any populations. A general principle of conservation biology states that a species' long-term persistence is dependent upon its capacity to adapt to changes in environmental conditions, competition, predation, disease risk, and parasites. Maintenance of genetic diversity helps to ensure that a species' adaptive capabilities are maintained (Caughley 1994, pp. 217–221; Frankham and Ralls 1998, p. 441). Results of previous studies regarding the genetic variability within and between populations of Stephens' kangaroo rat are conflicting, and further investigation is required to better understand the adaptive capabilities of Stephens' kangaroo rat and its ability to persist.

Population viability models were developed to recommend the minimum viable population sizes for Stephens' kangaroo rat needed to sustain the species at a 95 percent probability (Burke *et al.* 1991, p. 1). The model developed by Burke *et al.* (1991, pp.

27–28) is the most recent quantitative assessment of Stephens' kangaroo rat population viability and provides probabilities of Stephens' kangaroo rat persistence for intervals of 50 and 100 years. However, this model relies upon the fundamental assumption that the extent of suitable habitat at each site will not decrease throughout the duration of the 50- and 100-year intervals, and precipitation was modeled over 50-, 100-, and 200-year timeframes based on precipitation during the previous century. Given the significant advances in climate change science and the emerging threat of changes of precipitation regimes due to climate change, newer studies with a refined methodology are needed to determine an effective population size for Stephens' kangaroo rat.

Climate Change

Since the 1988 listing of Stephens' kangaroo rat, ongoing, accelerated climate change has been identified as a potential threat to species and ecosystems in the United States (IPCC 2007). The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2007, p. 5). Current climate change predictions for terrestrial areas in the Northern Hemisphere include warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 2–3; IPCC 2007, p. 9).

The general prediction for climate change impacts suggest increased frequency of extreme weather events (*i.e.,* heat waves, droughts, and floods) (IPCC 2007). Stephens' kangaroo rat may respond well after increased precipitation events in the short term, because increased precipitation results in more forbs for seed production. However, if increased intensity of precipitation events favor the increased persistence or an expansion in distribution of annual nonnative grasses, which are less preferred by Stephens' kangaroo rat, then these extreme weather events may negatively affect the species and its habitat. However, there is no substantive information as to how the changes in regional climate patterns (*i.e.,* frequency and intensity of precipitation) will affect Stephens' kangaroo rat or its habitat; predictions are based on continental-scale general models (*e.g.,* precipitation estimates) that do not yet account for localized consequences, including land use and land cover change effects on climate or other regional phenomena.

While we recognize that climate change is an important issue with potential effects to listed species and their habitats, we currently do not have specific information to make meaningful predictions regarding climate change effects to the Stephens' kangaroo rat or its habitat.

Summary of Factor E

Impacts to Stephens' kangaroo rat by Factor E threats have changed little since the species' 1988 listing. Although reduced, the threat from rodenticide use remains rangewide. Small population size continues to affect this species throughout its range and exacerbates the effects of other threats, making Stephens' kangaroo rat susceptible to stochastic events. Although it is uncertain how climate change will affect Stephens' kangaroo rat or its habitat, modeling predictions suggest more extreme weather events, which could impact the extent of suitable habitat or induce stresses on the species. Therefore, based on our review of the best available scientific and commercial information, we find other natural or manmade factors, including rodenticides, impacts of climate change, and small population size, threaten the continued existence of the Stephens' kangaroo rat now and in the foreseeable future.

Finding

An assessment of the need for a species' protection under the Act is based on threats to that species and the regulatory mechanisms in place to ameliorate impacts from these threats. As required by the Act, we considered the five factors in assessing whether the Stephens' kangaroo rat is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Stephens' kangaroo rat. We reviewed the May 1, 1995, and February 25, 2002, petitions; comments and information received after publication of our 90-day finding (69 FR 21567, April 21, 2004); information available in our files; and other available published and unpublished information. We also consulted with recognized experts on Stephens' kangaroo rat and its habitat and with other Federal and State agencies.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened, as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

The primary threats identified in the 1988 listing rule (53 FR 38465), habitat destruction from urban and agricultural development resulting in isolated habitat patches, has been largely ameliorated through the implementation and design of the core reserve system (through the HCP), through ongoing land acquisitions and easements, and with other conservation plans and efforts (MSHCP and INRMPs). Significant areas of habitat have been protected in western Riverside County and San Diego Counties since the species was listed. Populations in San Diego County that are on privately held lands may enhance the survival and recovery of the species, including some habitat under permanent conservation supporting the Ramona Grasslands population. The Stephens' kangaroo rat population at Camp Pendleton/Detachment Fallbrook in San Diego County is covered by active INRMPs that include actions to provide for the long-term conservation of the Stephens' kangaroo rat on Federal military lands.

In spite of these conservation gains, significant threats to Stephens' kangaroo rat in Riverside and San Diego Counties remain. There has been loss, fragmentation, and degradation of Stephens' kangaroo rat habitat in the past, and we have identified information indicating that Stephens' kangaroo rat habitat continues to be threatened by fragmentation and degradation associated with urban development (*see* Factor A) in western Riverside and San Diego Counties. This habitat degradation is associated with the lack of boundary security at some of the core reserves, which allows trespass, OHV use, and trash dumping, and the lack of appropriate management (such as fire suppression) to prevent invasive species or succession to shrub-

dominated communities. Lands currently or historically dedicated to agricultural activities likely continue to serve as a source of invasive, nonnative plants. Encroachment of nonnative grasses and succession to more shrub-dominated communities threaten Stephens' kangaroo rat habitat throughout the species' range by filling open spaces and reducing the presence of forbs (Factor A).

While existing data are not adequate to estimate population size, within the existing core reserves in western Riverside County or in San Diego County, surveys indicate that the amount of Stephens' kangaroo rat occupied habitat may be in decline in localities within both counties. Latest survey data indicate that Camp Pendleton, Detachment Fallbrook, and Lake Henshaw, in addition to previous declines in habitat populations, may have suffered declines in the amount of Stephens' kangaroo rat occupied habitat. Predation (Factor C) and rodenticide (Factor E) continue to threaten the species and may contribute additively to other threats affecting this species. Existing regulatory mechanisms, absent the protections of the Act, provide insufficient certainty (Factor D) that efforts needed to address long-term conservation of the species will be implemented or that they will be effective in reducing the level of threats to the Stephens' kangaroo rat throughout its range. Therefore, we find that, in absence of the Act, the existing regulatory mechanisms are not adequate to conserve Stephens' kangaroo rat throughout its range in the foreseeable future.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Our review of the information pertaining to the five threat factors does not support a conclusion that the threats have been sufficiently removed or their imminence, intensity, or magnitude have been reduced to the extent that the species no longer requires the protections of the Act. Therefore, we find the Stephens' kangaroo rat is in danger of extinction, or likely to become so within the foreseeable future, throughout all or a significant portion of its range and does not warrant delisting at this time.

We request that you submit any new information concerning the status of, or threats to, the Stephens' kangaroo rat to our Carlsbad Fish and Wildlife Office (*see* **ADDRESSES**) whenever it becomes available. New information will help us monitor the Stephens' kangaroo rat and encourage its conservation.

References Cited

A complete list of references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office.

Authority: The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 6, 2010.

Wendi Weber,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–20518 Filed 8–18–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0057; 92220–1113–0000–C3]

RIN 1018–AX23

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Endangered Whooping Cranes in Southwestern Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reintroduce whooping cranes *(Grus americana),* a federally listed endangered species, into habitat in its historic range in southwestern Louisiana with the intent to establish a nonmigratory flock that lives and breeds in the wetlands, marshes, and prairies there. We propose to classify the flock as a nonessential experimental population (NEP) according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. Releases will be within the historic breeding area in southwestern Louisiana near White Lake in Vermilion Parish. This proposed rule provides a plan for establishing the NEP and provides for allowable legal incidental take of whooping cranes within the defined NEP area. The objectives of the reintroduction are to advance recovery of the endangered whooping crane. No conflicts are envisioned between the reintroduction and any existing or anticipated Federal, State, Tribal, local government, or private actions such as oil/gas exploration and extraction, aquacultural practices, agricultural practices, pesticide application, water management, construction, recreation, trapping, or hunting.

DATES: We request that you send us comments on the proposed rule and the draft environmental assessment by the close of business on October 18, 2010, or at the public hearings. We will hold public informational open houses from 6 p.m. to 7 p.m., followed by public hearings from 7 p.m. to 9 p.m., on September 15 and 16, 2010, at the locations within the proposed NEP area identified in the **ADDRESSES** section.

ADDRESSES: *Written comments:* You may submit comments on the proposed rule by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket No. FWS–R4–ES–2010–0057 and follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R4–ES–2010–0057; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on the proposed rule on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments Procedures section below for more details).

You may submit comments on the draft environmental assessment (EA) by one of the following methods:

- *E-mail to: LouisianaCranesEA@fws.gov.*
- *U.S. mail or hand-delivery:* Lafayette Field Office, U.S. Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, LA 70506.

Please *see* the draft EA for additional information regarding commenting on that document.

Copies of Documents: The proposed rule and EA are available by the following methods. In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection:

(1) You can view them on *http://www.regulations.gov.* In the Search Documents box, enter FWS–R4–ES–2010–0057, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, select the type of documents you want

to view under the Document Type heading.

(2) You can make an appointment, during normal business hours, to view the documents, comments, and materials in person at the Lafayette Field Office, Lafayette Field Office, U.S. Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, LA 70506, telephone 337–291–3100, facsimile 337–291–3139. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

Public Hearing: We will hold public hearings at the following locations:

1. Gueydan, Louisiana, on September 15, 2010, from 7 p.m. to 9 p.m. at the Gueydan Civic Center, 901 Wilkinson Street, Gueydan, LA 70542; and

2. Baton Rouge, Louisiana, on September 16, 2010, from 7 p.m. to 9 p.m. at the Louisiana Department of Wildlife and Fisheries, 2000 Quail Drive, Baton Rouge, LA 70808. Each public hearing will be preceded by a public informational open house from 6 p.m. to 7 p.m. For information on reasonable accommodations to attend the informational open houses or the hearings, *see* the Public Hearings section.

FOR FURTHER INFORMATION CONTACT: Deborah Fuller, Lafayette Field Office, U.S. Fish and Wildlife Service (337–291–3100, facsimile 337–291–3139) or Bill Brooks, Jacksonville Field Office, U.S. Fish and Wildlife Service (904–731–3136, facsimile 904–731–3045).

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) The geographic boundary for the NEP;

(2) Information related to whooping crane itself as it relates specifically to this reintroduction effort; and

(3) Effects of the reintroduction on other native species and the ecosystem.

Prior to issuing a final rule on this proposed action and determining whether to prepare a finding of no significant impact or an Environmental Impact Statement, we will take into consideration comments and additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record for the final rule.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. Please note that comments submitted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-deliver hardcopy comments that include personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http:/www.regulations.gov*.

Public Hearings

We will hold public hearings at the locations listed above in **ADDRESSES**. Each public hearing will last from 7 p.m. to 9 p.m. on September 15, 2010, and September 16, 2010. Before each hearing, we will hold a public informational open house from 6 p.m. to 7 p.m. to provide an additional opportunity for the public to gain information and ask questions about the proposed rule. These open house sessions should assist interested parties in preparing substantive comments on the proposed rule. All comments we receive at the public hearings, both verbal and written, will be considered in making our final decision on the proposed establishment of the NEP. Persons needing reasonable accommodations in order to attend and participate in a public hearing should contact Deborah Fuller or Bill Brooks, at the address or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing. Information regarding this proposal is available in alternative formats upon request.

Background

Previous Federal Actions

The whooping crane (*Grus americana*) was listed as an endangered species on March 11, 1967 (32 FR 4001). We have previously designated NEPs for whooping cranes in Florida (58 FR 5647, January 22, 1993); the Rocky Mountains (62 FR 38932, July 21, 1997); and the Eastern United States (66 FR 33903, June 26, 2001). *See* also "Recovery Efforts" below.

Legislative

Congress made significant changes to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), with the addition in 1982 of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Under the Act, species listed as endangered or threatened are afforded protection largely through the prohibitions of section 9 and the requirements of section 7 and corresponding implementing regulations.

Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. Under Section 7(a)(1), all Federal agencies are mandated to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. Section 7(a)(2) states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. A threatened designation allows us discretion in devising management programs and special regulations for such a population. Section 9 of the Act prohibits the take of endangered species. "Take" is defined by the Act as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or

attempt to engage in any such conduct." Section 4(d) of the Act allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Based on the best available information, we must determine whether experimental populations are "essential," or "nonessential," to the continued existence of the species. Both an experimental population that is essential to the survival of the species and an experimental population that is not essential to the survival of the species are treated as a threatened species. However, for section 7 interagency cooperation purposes, if a nonessential experimental population ("NEP") is located outside of a National Wildlife Refuge or National Park, it is treated as a species proposed for listing.

For the purposes of section 7 of the Act, in situations where an NEP is located within a National Wildlife Refuge or National Park, the NEP is treated as threatened and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply.

When NEPs are located outside a National Wildlife Refuge or National Park Service unit, we treat the population as proposed for listing and only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. However, since an NEP is not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP. Regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. If this proposal is adopted, we would ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of individuals from donor populations for release is not likely to jeopardize the continued existence of the species in the wild.

Biological Information

The whooping crane is a member of the family Gruidae (cranes). It is the tallest bird in North America; males approach 1.5 meters (m) (5 feet (ft)) tall. In captivity, adult males average 7.3 kilograms (kg) (16 pounds (lb)) and females 6.4 kg (14 lbs). Adult plumage is snowy white except for black primary feathers, black or grayish alulae, sparse black bristly feathers on the carmine (red) crown and malar region (side of the head), and a dark gray-black wedge-shaped patch on the nape.

Adults are potentially long-lived. Current estimates suggest a maximum longevity in the wild of 32 years (Stehn, USFWS, 2010 pers comm.). Captive individuals are known to have survived 27 to 40 years. Mating is characterized by monogamous lifelong pair bonds. Fertile eggs are occasionally produced at age 3 years but more typically at age 4. Experienced pairs may not breed every year, especially when habitat conditions are poor. Whooping cranes ordinarily lay two eggs. They will renest if their first clutch is destroyed or lost before mid-incubation (Erickson and Derrickson 1981, p. 108; Kuyt 1981, p. 123). Although two eggs are laid, whooping crane pairs infrequently fledge two chicks (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007, p. 6). Approximately one of every four hatched chicks survives to reach the wintering grounds (U.S. Fish and Wildlife Service 1994, p. 14).

The whooping crane once occurred from the Arctic Sea to the high plateau of central Mexico, and from Utah east to New Jersey, South Carolina, and Florida (Allen 1952, p. 1; Nesbitt 1982, p. 151). In the 19th century, the principal breeding range extended from central Illinois northwest through northern Iowa, western Minnesota, northeastern North Dakota, southern Manitoba, and Saskatchewan to the vicinity of Edmonton, Alberta. There was also a nonmigratory population breeding in coastal Louisiana (Allen 1952, p. 28; Gomez 1992, p. 19).

Banks (1978, p. 1) derived estimates that there were 500 to 700 whooping cranes in 1870. By 1941, the migratory population contained only 16 individuals. The whooping crane population decline between these two estimates was a consequence of hunting and specimen collection, human disturbance, and conversion of the primary nesting habitat to hay, pastureland, and grain production (Allen 1952, p. 28; Erickson and Derrickson 1981, p. 108).

Allen (1952, pp. 18–40, 94) described several historical migration routes. One of the most important led from the principal nesting grounds in Iowa, Illinois, Minnesota, North Dakota, and Manitoba to coastal Louisiana. Other historic Gulf coast wintering locations included Mobile Bay in Alabama, and Bay St. Louis in Mississippi. A route from the nesting grounds in North Dakota and the Canadian Provinces went southward to the wintering areas of Texas and the Rio Grande Delta region of Mexico. Another migration route crossed the Appalachians to the Atlantic Coast.

Gomez (1992, p. 19) summarized the literary references regarding whooping cranes in southwestern Louisiana. This included Olmsted's mention of an "immense white crane" on the prairies of Louisiana (1861, p. 31); Nelson (1929, pp. 146–147) reporting on wintering whooping cranes near Pecan Island; and McIlhenny (1938, p. 670) describing the small flock of resident cranes at Avery Island and speculating on the reasons for the species' decline. Simons (1937, p. 220) included a photograph; Allen (1950, pp. 194–195) and Van Pelt (1950, p. 22) recounted the capture of the last member of the Louisiana nonmigratory flock; and Allen's whooping crane monograph (1952) is the main source on whooping crane ecology in southwest Louisiana.

Records from more interior areas of the Southeast include the Montgomery, Alabama, area; Crocketts Bluff on the White River, and near Corning in Arkansas; in Missouri at sites in Jackson County near Kansas City, in Lawrence County near Corning, southwest of Springfield in Audrain County, and near St. Louis; and in Kentucky near Louisville and Hickman. It is unknown whether these records represent wintering locations, remnants of a nonmigratory population, or wandering birds.

Status of Current Populations

Whooping cranes currently exist in three wild populations and within a captive breeding population at 12 locations. The first population, and the only self-sustaining natural wild population, nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of Wood Buffalo National Park. These birds winter along the

central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge (NWR) and adjacent areas (referred to later as the Aransas-Wood Buffalo population, or AWBP). From their nesting areas in Canada, these cranes migrate southeasterly through Alberta, Saskatchewan, and eastern Manitoba, stopping in southern Saskatchewan for several weeks in fall migration before continuing migration into the United States. They migrate through the Great Plains States of eastern Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. The winter habitat extends 50 kilometers (km) (31 miles) along the Texas coast from San Jose Island and Lamar Peninsula on the south to Welder Point and Matagorda Island on the north, and consists of estuarine marshes, shallow bays, and tidal flats (Allen 1952, p. 127; Blankinship 1976, p. 384). Their spring migration is more rapid, and they simply reverse the route followed in fall. Sixty-two pairs from this population nested in 2009, and 263 whooping cranes were reported from the wintering grounds in January 2010. The flock is recovering from a population low of 15 or 16 birds in 1941.

The second population, the Florida nonmigratory population, is found in the Kissimmee Prairie area of central Florida (*see* Recovery Efforts section for further details on this population and the Eastern population). Between 1993 and 2004, 289 captive-born, isolation-reared whooping cranes were released into Osceola, Lake, and Polk Counties in an effort to establish this nonmigratory flock. The last releases took place in the winter of 2004–2005. As of January 2010, only 26 individuals are being monitored, which include 9 pairs and 1 fledgling from 2009. Since the first nest attempt in 1999, there have been a total of 72 nest attempts, 33 chicks hatched and only 10 chicks successfully fledged. One pair has produced and fledged three of these chicks. Problems with survival and reproduction, both of which have been complicated by drought, are considered major challenges for this flock.

The third population of wild whooping cranes is referred to as the Eastern Migratory Population (EMP). The EMP has been established through reintroduction and currently numbers 97. During the 2009 spring breeding season, all 12 first nests of the season were abandoned, as have all first nests during the previous years. From 2005–2009, there have been a total of 41 nests (including 7 renests); only 2 renests have hatched chicks, and only 1 chick has been successfully fledged. As of July 27, 2010, a total of 9 pairs nested. Five of those pairs hatched chicks and two chicks remain alive as of July 27, 2010. Nesting failure is currently the EMP's foremost concern. There is compelling evidence of a correlation with presence of biting insects at the nests suggesting they may play a role in nest abandonment (Stehn, USFWS, 2009 pers. com.).

The whooping crane also occurs in a captive-breeding population. The whooping crane captive-breeding program, initiated in 1967, has been very successful. The Service and the Canadian Wildlife Service began taking eggs from the nests of the wild population (AWBP) in 1967, and raising the resulting young in captivity. Between 1967 and 1998, program officials took 242 eggs from the wild to captive sites. Birds raised from those eggs form the nucleus of the captive flock (USFWS 2007, p. C–2). The captive-breeding population is now kept at five captive-breeding centers: Patuxent Wildlife Research Center; the International Crane Foundation; the Devonian Wildlife Conservation Center, Calgary Zoo in Alberta, Canada; the Audubon Species Survival Center in New Orleans, Louisiana; and the San Antonio Zoo, Texas. The total captive population as of January 2010 stands near 150 birds in the captive-breeding centers and at other locations for display (Calgary Zoo in Alberta, Canada; Lowery Park Zoo in Tampa, Florida; Homosassa Springs State Wildlife Park in Homosassa, Florida; Jacksonville Zoo and Gardens in Jacksonville, Florida; Audubon Zoo in New Orleans, Louisiana; Milwaukee Zoo in Milwaukee, Wisconsin; and Sylvan Heights Waterfowl Park in Scotland Neck, North Carolina).

Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds, leaving little possibility of pioneering into new regions. The only wild, self-sustaining breeding population can be expected to continue utilizing its current nesting location with little likelihood of expansion, except on a local geographic scale. Even this population remains vulnerable to extirpation through a natural catastrophe, a red tide outbreak, a contaminant spill, and sea level rise due primarily to its limited wintering distribution along the Gulf Intracoastal Waterway of the Texas coast. This waterway experiences some of the heaviest barge traffic of any waterway in the world. Much of the shipping tonnage is petrochemical products. An accidental spill could destroy whooping cranes and/or their food resources. With the only wild breeding population being vulnerable, it is urgent that additional wild self-sustaining populations be established.

There have been three reintroduction projects to date. Reintroduction using cross-fostering with sandhill cranes in the Rocky Mountains occurred from 1973–1988, and was discontinued due to excessive mortality and failure of the birds to pair and breed. No cranes remain in this population. The Florida nonmigratory population numbers 26 birds (10 males, 16 females). Only two pairs attempted to breed during the 2009 drought, and one pair fledged a chick. In 2010, there are nine nests and one pair fledged a chick so far. Currently, the EMP numbers 97 birds and nine pair nested in 2010.

Recovery Efforts

The first recovery plan developed by the U.S./Canadian Whooping Crane Recovery Team (Recovery Team) was approved January 23, 1980. The first revision was approved on December 23, 1986, the second revision on February 11, 1994, and the third revision on May 29, 2007. The short-term goal of the recovery plan, as revised, is to reclassify the whooping crane from endangered to threatened status. The criteria for attaining this reclassification goal are (1) achieving a population level of 40 nesting pairs in the AWBP and (2) establishing two additional, separate, and self-sustaining populations consisting of 25 nesting pairs each. These new populations may be migratory or nonmigratory. If only one additional wild self-sustaining population is reestablished, then the AWBP must reach 100 nesting pairs and the new population must consist of 30 nesting pairs. If the establishment of two additional wild self-sustaining populations is not successful, then the AWBP must be self-sustaining and remain above 250 nesting pairs for reclassification to occur. The recovery plan recommends that these goals should be attained for 10 consecutive years before the species is reclassified to threatened.

In 1985, the Director-General of the Canadian Wildlife Service and the Director of the Service signed a memorandum of understanding (MOU) entitled "Conservation of the Whooping Crane Related to Coordinated Management Activities." The MOU was revised and signed again in 1990, 1995, and 2001 and is expected to be renewed in 2010. It discusses disposition of birds and eggs, postmortem analysis, population restoration and objectives, new population sites, international management, recovery plans, consultation, and coordination. All captive whooping cranes and their

future progeny are jointly owned by the Service and the Canadian Wildlife Service. Consequently, both nations are involved in recovery decisions.

Reintroductions

In early 1984, pursuant to the Recovery Plan goals and the recommendation of the Recovery Team, potential whooping crane release areas were selected in the eastern United States. By 1988, the Recovery Team recognized that cross-fostering with sandhill cranes was not working to establish a migratory population in the Rocky Mountains. The term "cross-fostering" refers to the foster rearing of the whooping crane chicks by another species, the sandhill crane. The possibility of inappropriate sexual imprinting associated with cross-fostering, and the lack of a proven technique for establishing a migratory flock influenced the Recovery Team to favor establishing a nonmigratory flock.

Studies of whooping cranes (Drewien and Bizeau 1977, pp. 201–218) and greater sandhill cranes (Nesbitt 1988, p. 44) have shown that, for these species, knowing when and where to migrate is learned rather than innate behavior. Captive-reared whooping cranes released in Florida were expected to develop a sedentary population. In summer 1988, the Recovery Team selected Kissimmee Prairie in central Florida as the area most suitable to establish a self-sustaining population. In 1993, the Florida Fish and Wildlife Conservation Commission (FWC) (formerly the Florida Game and Freshwater Fish Commission) began releasing captive-reared chicks from the breeding population in an attempt to establish a resident, nonmigratory flock. Eggs laid at the captive-breeding facilities were sent to the Patuxent Wildlife Research Center to be hatched and reared in isolation. The chicks were brought to Florida in the fall where they were "gentle released," a technique that involves a protracted period of acclimation in a specially constructed release pen followed by a gradual transition to life on their own in the wild. This release methodology has helped to establish a wild resident, nonmigratory flock of whooping cranes in central Florida.

In 1996, the Recovery Team decided to investigate the potential for another reintroduction site in the eastern United States, with the intent of establishing an additional migratory population as the third flock to meet recovery goals. Following a study of potential wintering sites (Cannon 1998, p. 1–19), the Recovery Team selected the Chassahowitzka NWR/St. Martin's Marsh Aquatic Preserve in Florida as the top wintering site for a new migratory flock of whooping cranes. A detailed analysis was presented at the Recovery Team meeting in September 1999 (Cannon 1999, p. 1–38), and the Recovery Team then recommended that releases for an EMP target central Wisconsin at Necedah NWR as the core breeding area with the wintering site along the Gulf coast of Florida at the Chassahowitzka NWR.

In January 2001, the Recovery Team met at the Audubon Center for Research on Endangered Species in Belle Chasse, Louisiana. Highlights of the meeting included genetic management recommendations for the captive flock, an overflight of crane habitat in southwestern Louisiana, including the White Lake and Marsh Island areas, and the recommendation to proceed with a migratory reintroduction of whooping cranes in the eastern United States. Following the Recovery Team meeting, the Louisiana Crane Working Group was formed to help with research and information needed to assess the potential for releasing whooping cranes in Louisiana.

In the spring of 2001, eggs laid at the captive-breeding facilities were sent to the Patuxent Wildlife Research Center to be hatched and reared in the spring. The chicks were brought to the Necedah NWR in central Wisconsin in the early summer and were trained to fly behind ultralight aircraft by Operation Migration. In the fall of 2001, the Whooping Crane Eastern Partnership's (WCEP) first historic whooping crane migration led by ultralights from central Wisconsin to the central Gulf coast of Florida was completed by Operation Migration. This release methodology has established a wild migrating flock of whooping cranes with a core breeding/summering area at Necedah NWR in central Wisconsin and a primary wintering area in west-central Florida (Pasco and Citrus Counties and at Paynes Prairie in Alachua County). Portions of this population also winter at Hiwassee Wildlife Refuge in central Tennessee, Wheeler NWR in northern Alabama, and the Ashepoo, Combahee, and South Edisto Basin (ACE Basin) in coastal South Carolina. Since 2005, additional captive chicks reared at the International Crane Foundation have been released directly into groups of older whooping cranes in central Wisconsin prior to the fall to follow older cranes during migration.

In 2004, the Florida FWC and the Recovery Team made the decision to postpone additional releases in Florida. Between 1993 and 2004, program members released 289 captive-reared birds in an attempt to establish a Florida nonmigratory flock. Problems with survival and reproduction, both of which have been complicated by drought, were considered major challenges for this flock. The Florida FWC postponed releases to focus their resources to study these issues.

In 2005, two members of the Recovery Team met with Louisiana DWF and the Louisiana Crane Working Group to develop a plan to investigate the feasibility of a whooping crane reintroduction in Louisiana. In February 2007, a Recovery Team meeting was held in Lafayette, Louisiana, to assess the status of whooping crane recovery efforts. This meeting included updates and recovery action recommendations for the AWBP, Florida, and EMP populations. In addition, the Recovery Team also came to Louisiana to further evaluate the interest in releasing whooping cranes in Louisiana. A preliminary assessment of the habitat for a resident nonmigratory flock and wintering habitat for a migratory flock was conducted during field visits to White Lake and Marsh Island. The Recovery Team endorsed a plan that could lead to a reintroduction of whooping cranes in Louisiana. The Recovery Team recommended the U.S. Geological Survey, Louisiana Cooperative Fish and Wildlife Research Unit, conduct a habitat assessment and food availability study at White Lake as a potential release area for a nonmigratory population and Marsh Island as a potential wintering area for a migratory flock of whooping cranes. Additional research on sandhill crane migration patterns for cranes that winter in Louisiana was also recommended. The Recovery Team also requested the Whooping Crane Health Advisory Team prepare a report on the potential health risks if whooping cranes reintroduced into Louisiana were to mix with cranes in the AWBP.

In 2008, scientists from Florida FWC and major project partners conducted a workshop to assess the current status and potential for success of establishing the resident, nonmigratory population of whooping cranes in Florida. The Recovery Team used the workshop findings and other considerations, and in 2009 recommended there be no further releases into the Florida flock. The water regimes produced by periodic droughts in Florida make it extremely unlikely that reproduction in wild-hatched Florida whooping cranes will ever achieve production rates adequate for success. The Florida FWC continues to study and monitor the remaining nonmigratory whooping cranes to gather

information that may prove valuable for future recovery efforts.

Nesting failure is currently the EMP's foremost concern. WCEP's nest monitoring efforts and additional studies initiated in 2009 have provided compelling but not conclusive evidence of a correlation with presence of biting insects at the nests as contributing factor to nest abandonment. In August of 2009, the Service met with the Louisiana Department of Wildlife and Fisheries (DWF) to discuss establishing a possible resident nonmigratory population of whooping cranes in Louisiana.

Objectives of Proposed Reintroduction

The objectives of this proposed reintroduction into Louisiana are to: (1) Implement a primary recovery action for the whooping crane; (2) further assess the suitability of southwestern Louisiana as whooping crane habitat; and (3) evaluate the suitability of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population. Information on survival of released birds, movements, behavior, causes of losses, reproductive success, and other data will be gathered throughout the project. This reintroduction project's progress will be evaluated annually.

The likelihood of the releases resulting in a self-sustaining population is believed to be good. Whooping cranes historically occurred in Louisiana in both a resident, nonmigratory flock and a migratory flock that wintered in Louisiana. The proposed release area, White Lake, is the location where whooping cranes were historically documented raising young in Louisiana (Gomez 1992, p. 20). The minimum goal for numbers of cranes to be released annually is based on the research of Griffith *et al.* (1989, pp. 477–480). If results of this initial proposed release are favorable, releases will be continued with the goal of releasing up to 30 whooping cranes annually for about 10 years. For a long-lived species like the whooping crane, continuing releases for a number of years increases the likelihood of reaching a population level that can sustain fluctuating environmental conditions. The rearing and release techniques to be used have proven successful in supplementing the wild population of the endangered Mississippi sandhill crane *(Grus canadensis pulla).*

We may select additional release sites later during the efforts to reintroduce non-migratory whooping cranes to Louisiana to reduce the risk of catastrophic loss of the population. Additional release sites could also increase the potential breeding range in Louisiana. Multiple release areas may increase the opportunity for successful pairing because females tend to disperse from their natal site when searching for a mate. Males, however, have a stronger homing tendency toward establishing their nesting territory near the natal area (Drewien *et al.* 1983, p. 9). When captive-reared birds are released at a wild location, the birds may view the release site as a natal area. If they do, females would likely disperse away from the release area in their search for a mate. Therefore, it may be advantageous to have several release sites to provide a broader distribution of territorial males. As a result, it is possible that we will pursue future releases at additional sites. These additional sites would be selected based on the observed dispersal patterns of birds from the initial releases.

The Louisiana DWF has discussed this proposed experimental population with the Mississippi Flyway Council. The Service has discussed this proposed experimental population with the Central Flyway Council. During that discussion, the Texas Parks and Wildlife Department representative expressed interest in having two coastal counties in Texas included as part of the area for this proposed experimental population to avoid possible closures of waterfowl hunting if whooping cranes from the proposed experimental population were to wander into the area. This proposed regulation does not include those two counties as the Service believes that expansion of the endangered AWBP into the two coastal counties is an essential aspect of achieving recovery of the species. The Service and Louisiana DWF will coordinate with the Mississippi, Central, and Atlantic Flyway Councils during the public comment period for this proposed regulation and will contact the Texas Parks and Wildlife Department to obtain additional input on the potential for reintroduction of a nonmigratory whooping crane population in southwestern Louisiana. The Louisiana DWF has also made presentations and facilitated discussions with numerous organizations and potentially affected interest groups and government representatives in southwestern Louisiana.

Louisiana DWF and the Service have conducted extensive coordination, both formal and informal, with constituents related to the proposed nonmigratory NEP. All have been asked to provide comments on this proposed rule. The Canadian Wildlife Service, a partner with the Service as noted in the Memorandum of Understanding, has approved the proposed project.

An extensive sharing of information about the effort to reintroduce a nonmigratory flock to Louisiana and the species itself, via educational efforts targeted toward the public throughout the NEP area, will enhance public awareness of this species and its reintroduction. We will encourage the public to cooperate with the Service and Louisiana DWF in attempts to maintain and protect whooping cranes in the release area.

Reintroduction Protocol

We propose to initially gentle-release four to eight juvenile whooping cranes in the White Lake Wetlands Conservation Area in Vermilion Parish, Louisiana. These birds will have been captive-reared at one of the captive-rearing facilities, then transferred to facilities at the Louisiana release site, and conditioned for wild release to increase post-release survival (Zwank and Wilson 1987, p. 166; Ellis *et al.* 1992b, p. 147; Nesbitt *et al.* 2001, p. 62) and adaptability to wild foods. Before release, the cranes will be banded for identification purposes, tagged with radio and/or GPS solar-powered satellite transmitters at release, and monitored to discern movements, habitat use, other behavior, and survival. Numbers of birds available for release will depend on production at captive-propagation facilities and the future need for additional releases into the EMP. The Species Survival Center in New Orleans has received Federal funding to construct a hatchery and chick- rearing facility so that whooping cranes produced for release in this project could be hatched and reared in Louisiana.

Captive-reared cranes are conditioned for wild release by being reared in isolation from humans, by use of conspecific role models (puppets), and by exercising with animal care personnel in crane costumes to avoid imprinting on humans (Horwich 1989, pp. 380–384; Ellis *et al.* 1992a, pp. 137–138; Urbanek and Bookhout 1992, pp. 122–123). This technique has been used to establish a population of nonmigratory whooping cranes in Florida (Nesbitt *et al.* 2001, pp. 62–63). This technique has also been successful in supplementing the population of endangered nonmigratory Mississippi sandhill cranes in Mississippi (Zwank and Wilson 1987, p. 165; Ellis *et al.* 1992b, p. 147). Facilities for captive maintenance of the birds will be modeled after facilities at the Patuxent Wildlife Research Center and the International Crane Foundation and will

conform to standards set forth in the Animal Welfare Act regulations (9 CFR) and Louisiana Wildlife Code. To further ensure the well-being of birds in captivity and their suitability for release to the wild, facilities will incorporate features of their natural environment (*e.g.,* feeding, loafing, and roosting habitat) to the extent possible. The gentle release-conditioning pens will be similar to those used successfully to release whooping cranes in the Florida and EMP populations, as well as release of Mississippi sandhill cranes. Pens help new birds acclimate to their surroundings; provide a degree of protection against predation, and supplemental food resources if needed. Pre-release conditioning will occur at facilities near the release site.

Since migration is a learned rather than an innate behavior, captive-reared whooping cranes released in Louisiana will likely adhere to their release area rather than disperse into new regions. Sixteen Florida nonmigratory whooping cranes have been documented in five States other than Florida; seven returned to the reintroduction area, and nine have not been seen again (Folk *et al.* 2008, pp. 7–12).

Proposed Reintroduced Population

In 2001, we designated the State of Louisiana as part of a geographic area where whooping cranes within its boundaries would be considered nonessential experimental. We are proposing with this regulation to clarify that the reintroduced nonmigratory flock of whooping cranes in southwestern Louisiana will also be fully considered as an NEP according to the provisions of section 10(j) of the Act. This designation can be justified because no adverse effects to extant wild or captive whooping crane populations will result from release of progeny from the captive flock. We also have a reasonable expectation that the reintroduction effort into Louisiana will result in the successful establishment of a self-sustaining, resident, nonmigratory flock, which will contribute to the recovery of the species. The special rule contained within this proposal is expected to ensure that this reintroduction is compatible with current or planned human activities in the release area.

We have concluded that this experimental population of nonmigratory birds is not essential to the continued existence of the whooping crane for the following reasons:

(a) For the time being, the AWBP and the captive populations will be the primary species populations. With approximately 150 birds in captivity at 12 discrete sites (5 main facilities and 7 other locations), and approximately 250 birds in the AWBP, the experimental population is not essential to the continued existence of the species. The species has been protected against the threat of extinction from a single catastrophic event by gradual recovery of the AWBP and by an increase in the numbers and management of the cranes at the captive sites.

(b) For the time being, the primary repository of genetic diversity for the species will be the approximately 400 wild and captive whooping cranes mentioned in (a) above. The birds selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence any loss of reintroduced animals in this experiment will not significantly impact the goal of preserving maximum genetic diversity in the species.

(c) Any birds lost during the reintroduction attempt can be replaced through captive breeding. Production from the extant captive flock is already large enough to support wild releases with approximately 30 juveniles available annually. We expect this number to increase to over 40 as young pairs already in captivity reach breeding age.

This illustrates the potential of the captive flock to replace individual birds proposed for release in reintroduction efforts. Levels of production are expected to be sufficient to support both this proposal and continued releases into the EMP.

The hazards and uncertainties of the reintroduction experiment are substantial, but a decision not to attempt to utilize the existing captive-breeding potential to establish an additional, wild, self-sustaining population could be equally hazardous to survival of the species in the wild. The AWBP could be lost as the result of a catastrophic event or a contaminant spill on the wintering grounds that would necessitate management efforts to establish an additional wild population. The recovery plan identifies the need for three self-sustaining wild populations—consisting of 40 nesting pairs in the AWBP and 2 additional, separate and self-sustaining populations consisting of 25 nesting pairs each—to be in existence before the whooping crane can be reclassified to threatened status.

Due to the survival and reproductive issues faced by the Florida nonmigratory flock, it is extremely unlikely that reproduction in wild-hatched Florida whooping cranes will ever achieve production rates adequate for success. Depending on whether the reproductive issues can be overcome, the EMP has the potential to become the second self-sustaining, wild population needed to move toward recovery. Establishing a Louisiana nonmigratory flock as the third recovery population has become a recovery priority. Whooping cranes historically occurred in Louisiana in both a resident, nonmigratory flock and a migratory flock that wintered in Louisiana. The proposed release area, White Lake, is the location where whooping cranes were historically documented raising young in Louisiana (Gomez 1992, p. 20). If this reintroduction effort is successful, conservation of the species will have been furthered considerably by establishing another self-sustaining population in currently unoccupied habitat. Because establishment of other populations has not yet been entirely successful, establishing a Louisiana nonmigratory flock would also demonstrate that captive-reared cranes can be used to establish a nonmigratory, wild population.

Location of Reintroduced Population

The proposed release site, White Lake Wetlands Conservation Area (WLWCA), encompasses part of the area historically occupied by a nonmigratory, breeding population of whooping cranes (Allen 1952, p. 30; Gomez 1992, p. 19). WLWCA (formerly known as the Standolind Tract), located in Vermilion Parish, was owned and managed by BP America Production White Lake (BPWL) until 2002 when BPWL donated the property to the State of Louisiana. At that time a cooperative Endeavor Agreement between the State of Louisiana and White Lake Preservation Inc., was executed for management of the property. In 2005, according to the terms of that agreement, the Louisiana DWF received total control for management of this area. BP retained the mineral rights to WLWCA.

The WLWCA is located within the Mermentau Basin, along the north shore of White Lake, in southwestern Louisiana. Natural drainage within the basin has been interrupted by manmade features. The major source of hydrological change in this basin has been the conversion of two estuarine lakes (Grand and White Lakes) into freshwater reservoirs for agricultural (rice) irrigation in the surrounding areas. There are several large areas of public ownership in the general vicinity. The WLWCA is located approximately 11 km (7 miles) north of the State-owned Rockefeller Wildlife Refuge and Game Preserve (30,773 hectares (76,042 acres)) and

approximately 32 km (20 miles) east of Cameron Prairie NWR (3,893 hectares (9,621 acres)). The area north of WLWCA is primarily used for agriculture although it was historically the panicum (paille fine) marsh that Allen (1952, p. 30) reported as being used by whooping cranes. Nonagricultural areas surrounding WLWCA consist of brackish to intermediate marshes, privately owned and primarily used for waterfowl hunting.

WLWCA comprises approximately 28,722 contiguous hectares (70,970 acres) and is divided into several management units. Approximately 7,690 hectares (19,000 acres) are in agricultural use, primarily in the northeastern portion (Management Units A and F), and the rest of the area is wetlands. The wetland portions are nearly bisected by Florence Canal (Gomez 1992, p. 21). Approximately 12,100 hectares (29,900 acres) east of Florence Canal (Management Unit B) consist of maidencane marsh, and water levels are passively managed. The wetland areas west of Florence Canal (Management Areas E and C), were formerly a sawgrass marsh (until a die-off in the late 1950s) and now consist of west bulltongue (Gomez 1992, p. 21). Water levels are actively managed using pumps on approximately 1,943 hectares (4,800 acres) (Unit C).

The proposed release site (Unit E), consists of approximately 7,028 hectares (17,365 acres) of wetlands on which the Louisiana DWF actively manages water level using pumps and weirs. Water level management consists of providing habitat for wintering waterfowl by gradual flooding in the fall with the deepest water (0.61 to 0.76 m (2 to 2.5 ft)) generally occurring at the western end. The area is kept flooded for approximately 6 weeks and then drawn down in the spring. Boat traffic occurs in the Florence Canal (the eastern border of this unit). Limited, controlled waterfowl hunting occurs on the WLWCA. Occasional, controlled, nonconsumptive activities (*e.g.,* boating) periodically occur in the spring and summer. The Louisiana DWF has facilities adjacent to WLWCA where monitoring personnel would be housed.

Section 10(j) of the Act requires that an experimental population be geographically separate from other populations of the same species. The NEP area already identified in the eastern United States for the EMP (66 FR 33903) will include, if this rule is finalized, nonmigratory whooping cranes reintroduced in Louisiana. The expectation is that most whooping cranes will be concentrated within wetlands at the proposed release site. Dispersal within the NEP area may include areas in Calcasieu, Jefferson Davis, and Cameron Parishes. The marshes and wetlands of southwestern Louisiana are expected to receive occasional use by the cranes and may be used in the event of future population expansion. However, any whooping crane found within Louisiana will be considered part of an experimental population. Although experience has shown that most birds show an affinity to the release area after gentle release, it is impossible to predict where individual whooping cranes may disperse following release within the project area. A majority of the whooping cranes released within Florida stayed within the NEP. One pair of whooping cranes from the Florida flock is known to have traveled to Illinois and Michigan during the severe drought of 2000 and a second pair dispersed to Virginia, but surviving members of the pairs returned to the core reintroduction area in Florida. Designation of the Louisiana nonmigratory NEP allows for the possible occurrence of cranes in a larger area of Louisiana.

Whooping cranes released in southwestern Louisiana are not expected to interact with the AWBP flock along the Texas coast as Aransas NWR is approximately 482 km (285 miles) southwest of the proposed release area. However, if the Recovery Team were to consider having EMP whooping cranes winter in Louisiana, some interaction between EMP migratory and Louisiana nonmigratory cranes would be expected to occur. The possibility that individual birds from either flock would acquire either migratory or nonmigratory behavior through association, especially if pairs form between members of the different populations, is not likely. Research with sandhill cranes in Florida has shown that migratory and nonmigratory populations mix during winter and yet maintain their own migratory and nonmigratory behaviors. The same holds true for whooping cranes. Individuals of the Florida nonmigratory population and the EMP have associated during the winter; however, the two flocks have remained discrete and each represents a separate population as specified in the Recovery Plan (Canadian Wildlife Service and USFWS 2007, p. xii). As such, while the levels of protection are the same, the two populations may be managed differently.

Released whooping cranes might wander into the eastern counties of Texas adjacent to the expected dispersal area and outside the proposed Louisiana NEP area. We believe the frequency of such movements is likely to be very low. Any whooping cranes that leave the proposed Louisiana NEP area but remain in the eastern United States NEP will still be considered as experimental nonessential. Any whooping crane that leaves the Louisiana and eastern United States NEP will be considered endangered. However, for any whooping cranes that move outside the Louisiana and eastern United States NEP areas, including those that move west towards the AWBP wintering area, attempts will be made to capture and return them to the appropriate area if a reasonable possibility exists for contact with the AWBP population or if removal is requested by the State which they enter.

Birds from the AWBP flock have never been observed in Louisiana and rarely been observed in any of the States within the eastern United States NEP area except as a result of an extreme weather event. They are not expected to be found in the Louisiana NEP. Any whooping cranes that occur within the Louisiana NEP area will be considered to be part of the NEP and will be subject to the protective measures in place for the NEP. However, because of the extremely limited number of incidents anticipated, the decreased level of protections afforded AWBP cranes that cross into the NEP is not expected to have any significant adverse impacts to the AWBP.

Management

a. Monitoring

Whooping cranes will be intensively monitored by Louisiana DWF project and other personnel prior to and after release. The birds will be observed daily while they are in the gentle-release/conditioning pen.

To ensure contact with the released birds, each crane will be equipped with a legband-mounted radio transmitter and/or a solar-powered GPS satellite transmitter. Subsequent to being gentle released, the birds will be monitored regularly to assess movements and dispersal from the area of the release pen. Whooping cranes will be checked regularly for mortality or indications of disease (listlessness, social exclusion, flightlessness, or obvious weakness). Social behavior (*e.g.,* pair formation, dominance, cohort loyalty) will also be evaluated.

A voucher blood serum sample will be taken for each crane prior to its arrival in Louisiana. A second sample will be taken just prior to release. Any time a bird is handled after release into the wild (*e.g.,* when recaptured to replace transmitters), samples may be

taken to monitor disease exposure and physiological condition. One year after release, if possible, all surviving whooping cranes may be captured and an evaluation made of their exposure to disease/parasites through blood, fecal, and other sampling regimens. If preliminary results are favorable, the releases will be continued annually, with the goal of releasing up to 30 birds per year for about 10 years and then evaluating the success of the recovery effort.

b. Disease/Parasite Considerations

A possible disease concern has been the probable presence of Infectious Bursal Disease (IBD) in the Central Flyway. Progress has been made on determining whether IBD is likely to affect whooping cranes. An IBD-like virus was isolated from an AWBP juvenile whooping crane that died at Aransas in February 2009. The U.S. Geological Survey's National Wildlife Health Center is studying this virus to classify it more precisely. Blood samples from sandhill cranes collected on the Platte River, Nebraska, in March 2009 found that 12 of 19 had antibodies to IBD. It appears that sandhill cranes and whooping cranes have been exposed to IBD in the Central Flyway and that whooping cranes are likely not seriously affected by IBD. Thus, it is unlikely that the reintroduction of whooping cranes into Louisiana poses any significant risk to the AWBP whooping cranes in regard to transfer of IBD.

Both sandhill and whooping cranes are also known to be vulnerable, in part or all of their natural range, to avian herpes (inclusion body disease), avian cholera, acute and chronic mycotoxicosis, eastern equine encephalitis (EEE), and avian tuberculosis. Additionally, *Eimeria* spp., *Haemoproteus* spp., *Leucocytozoon* spp., avian pox, and *Hexamita* spp. have been identified as debilitating or lethal factors in wild or pre-release, captive populations.

A group of crane veterinarians and disease specialists have developed protocols for pre-release and pre-transfer health screening for birds selected for release to prevent introduction of diseases and parasites. Exposure to disease and parasites will be evaluated through blood, serum, and fecal analysis of any individual crane handled post-release or at the regular monitoring interval. Remedial action will be taken to return to good health any sick individuals taken into captivity. Sick birds will be held in special facilities and their health and treatment monitored by veterinarians. Special attention will be given to EEE because an outbreak at the Patuxent Wildlife Research Center in 1984 killed 7 of 39 whooping cranes present there. After the outbreak, the equine EEE vaccine has been used on captive cranes. In 1989, EEE was documented in sentinel bobwhite quail and sandhill cranes at the Patuxent Wildlife Research Center. No whooping cranes became ill, and it appears the vaccine may provide protection. EEE is present in Louisiana, so the released birds may be vaccinated. Other encephalitis diseases have not been documented as occurring or causing morbidity or mortality in cranes.

When appropriate, other avian species may be used to assess the prevalence of certain disease factors. This could mean using sentinel turkeys for ascertaining exposure probability to encephalitis or evaluating a species with similar food habits for susceptibility to chronic mycotoxicosis.

c. Genetic Considerations

The ultimate genetic goal of the reintroduction program is to establish wild reintroduced populations that possess the maximum level of genetic diversity available from the captive population. Early reintroductions may consist of a biased sample of the genetic diversity of the captive gene pool, with certain genetic lineages overrepresented. This is because certain pairs within the captive flock are very good breeders and are managed to produce multiple clutches thereby maximizing the number of cranes for release. This bias will be corrected over time by selecting and reestablishing breeding whooping cranes that compensate for any genetic biases in earlier releases.

d. Mortality

Although efforts will be made to minimize mortality, some will inevitably occur as captive-reared birds adapt to the wild. Collisions with power lines and fences are known hazards to wild whooping cranes. If whooping cranes begin regular use of areas traversed by power lines or fences, the Service and Louisiana DWF will consider placing markers on the obstacles to reduce the probability of collisions. Potential predators of adult and young whooping cranes include bobcats, coyotes, bald eagles, and alligators. Red fox, owls, and raccoons are also potential predators of young cranes.

Recently released whooping cranes will need protection from natural sources of mortality (predators, disease, and inadequate foods) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, gentle release, supplemental feeding for a post-release period, vaccination, and predator control. Predator control conditioning will include teaching young cranes the habit of roosting in standing water. Predation by bobcats has been a significant source of mortality in the Eastern Migratory and Florida nonmigratory flocks, and teaching appropriate roosting behavior to young birds should help to reduce losses to coyotes and bobcats. We will minimize human-caused mortality through a number of measures such as: (a) Placing whooping cranes in an area with low human population density and relatively low development; (b) working with and educating landowners, land managers, developers, and recreationalists to develop means for conducting their existing and planned activities in a manner that is compatible with whooping crane recovery; and (c) conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to the cranes. As mentioned above in "Monitoring", the whooping cranes will be closely monitored as the reintroduction effort progresses. We will work closely with the State and local landowners in monitoring and evaluating the reintroduction effort and in adaptively managing any human-caused mortality issues that arise.

e. Special Handling

Service employees, Louisiana DWF employees, and their agents will be authorized to relocate whooping cranes to avoid conflict with human activities; relocate whooping cranes that have moved outside the appropriate release area or the NEP area when removal is necessary or requested; relocate whooping cranes within the NEP area to improve survival and recovery prospects; and aid cranes that are sick, injured or otherwise in need of special care. If a whooping crane is determined to be unfit to remain in the wild, it will be returned to captivity. Service employees, Louisiana DWF and their agents will be authorized to salvage dead whooping cranes.

f. Potential Conflicts

In the central and western United States, conflicts have resulted from the hunting of migratory birds in areas utilized by whooping cranes, particularly the hunting of sandhill cranes and snow geese *(Chen cerulescens),* because novice hunters may have difficulty distinguishing whooping cranes from those species. In recent years, three crane mortalities

have been documented incidental to hunting activities. In Louisiana, snow geese are hunted; however, sandhill cranes are not. Accidental shooting of a whooping crane in this experimental population occurring in the course of otherwise lawful hunting activity is exempt from take restrictions under the Act in this proposed special regulation. Applicable Federal penalties under the Migratory Bird Treaty Act and/or State penalties, however, may still apply. There will be no federally mandated hunting area or season closures or season modifications for the purpose of protecting whooping cranes. We will minimize mortality due to accidental shootings by providing educational opportunities and information to hunters to assist them in distinguishing whooping cranes from other legal game species.

The bulk of traditional hunting in the White Lake Wetlands Conservation Area release area has been for waterfowl and migratory bird species, turkey *(Meleagris gallopavo),* deer *(Odocoileus virginianus),* and small game. Conflict with traditional hunting in the release area is not anticipated. Access to some limited areas at release sites and at times when whooping cranes might be particularly vulnerable to human disturbance (*i.e.,* at occupied nesting areas) may be temporarily restricted. Any temporary restricted access to areas for these purposes will be of the minimum size and duration necessary for protection of the proposed NEP cranes, and will be closely coordinated with the Service and at the discretion of Louisiana DWF. Any such access restrictions will not require Federal closure of hunting areas or seasons.

The Louisiana DWF will maintain its whooping crane management authorities regarding the whooping crane. It is not directed by this rule to take any specific actions to provide any special protective measures, nor is it prevented from imposing restrictions under State law, such as protective designations, and area closures. Louisiana DWF has indicated that it would not propose hunting restrictions or closures related to game species because of the proposed whooping crane reintroduction.

Overall, the presence of whooping cranes is not expected to result in constraints on hunting of wildlife or to affect economic gain landowners might receive from hunting leases. The potential exists for future hunting seasons to be established for other migratory birds that are not currently hunted in Louisiana. The proposed action will not prevent the establishment of future hunting seasons approved for other migratory bird species by the Central and Mississippi Flyway Councils.

The principal activities on private property adjacent to the release area are agriculture, aquaculture, oil and gas exploration and extraction, water level management as part of coastal restoration projects, and recreation. Use of these private properties by whooping cranes will not preclude such uses. Offshore oil exploration and extraction activities as well as the Deep Horizon spill and cleanup are not expected to affect whooping cranes in the NEP area because the release area is more than 15 miles from the coast in a fresh to brackish marsh system. The Louisiana DWF recently completed a risk assessment associated with this reintroduction and does not anticipate spill impacts from the Deepwater Horizon/MC252OS Spill Area into the whooping crane restoration site at WLWCA or into the surrounding habitats in southwestern Louisiana. The WLWCA is located over 200 miles from the Deepwater Horizon oil spill release site and 17 miles north of the Gulf of Mexico shoreline. Additionally, there are multiple physical barriers to stop crude oil from entering WLWCA such as the Gulf of Mexico Beach Rim, Levees, Water Control Structures, Locks, and Spill Control Equipment. The proposed special regulation accompanying this proposed rule authorizes take of the whooping crane in the proposed NEP area when the take is accidental and incidental to an otherwise lawful activity.

An additional issue identified as a possible conflict is the potential for crop depredation. There is evidence that some sandhill cranes have caused losses of emerging corn in Wisconsin (Blackwell, Helon and Dolbeer, 2001. p. 67). It is possible that whooping cranes could engage in this type of behavior on planted crops in Louisiana as well. However, whooping cranes are socially less gregarious than sandhill cranes, and tend to restrict the bulk of their foraging activities to wetland areas. Therefore, they are believed to be less likely to cause significant crop depredations.

Whooping cranes are known to use ranchlands and pasture with no known impacts to cattle operation practices. Among the primary sandhill and whooping crane habitats in Florida are ranchlands and pastures associated with cattle operations (Nesbitt and Williams, 1990. p. 95). AWBP whooping cranes are also known to utilize the cattle ranchlands adjacent to Aransas National Wildlife Refuge as wintering habitat (Canadian Wildlife Service and USFWS 2007. p. 14). We do not anticipate that the presence of whooping cranes on ranchlands or pastures in Louisiana would cause any impacts to cattle operations.

Like other wading bird species, whooping cranes will forage along lake and pond edges, and may forage along the edges of ponds used for crawfish production, but this is not likely to cause significant stock depredations on crawfish. However, water levels of crawfish ponds are lowered at certain times for management purposes. These lowering of water depths, called draw downs, do attract large numbers of wading birds as aquatic organisms become concentrated and vulnerable to depredation during the lower water depths. If such depredations occur due to whooping cranes, they can be minimized through use of bird scaring devices and other techniques. Therefore, we do not expect that whooping cranes will pose a significant threat to stock depredation on crawfish. Another concern is that whooping cranes may choose to nest in an area with an ongoing crawfish operation. If whooping cranes nest in such a situation, it would indicate that those birds have acclimated to those activities and it is anticipated that the activities would not likely impact a nesting attempt.

If whooping cranes use National Wildlife Refuges in Louisiana, the management programs on the refuges will continue as identified in the individual refuges approved Comprehensive Conservation Plans, step-down management plans, Annual Work Plans, and via customary and traditional accouterments. Activities of existing mineral rights owners, which include exploration, mining, marketing, and production, will continue to be managed by the Service in accordance with existing Refuge Special Use Permit Conditions currently used for the protection of migratory birds. All other mineral operations will further be managed in accordance with approved Comprehensive Conservation Plans.

Under the existing rules currently in place for the protection of all fish and wildlife, including the numerous wading birds and other migratory birds in the Louisiana coastal zone, mineral exploration and extraction activities on private and/or State-owned lands can continue without additional impacts from the presence of reintroduced birds. Whooping cranes, like other wading birds, will flush due to close proximity of helicopters or airboats. No Federal rule changes would be implemented in the NEP area regarding such matters. Current practices by private, State, and Federal land managers will minimize

unnecessary harassment of all wildlife during such activities.

This reintroduction effort will gentle-release captive-born, isolation-reared whooping crane chicks at White Lake Wetlands Conservation Area in Vermilion Parish in an attempt to establish a Louisiana resident, nonmigratory population of whooping cranes. It will be difficult to predict which specific sites will be utilized by the birds, and some cranes may use habitats with which they have no previous experience. Whooping cranes that appear in undesirable locations will be considered for relocation by capture and/or hazing of the birds. Possible conflicts with hunting, recreation, agriculture, aquaculture, oil and gas exploration/extraction, and water management interests within the release area will be minimized through an extensive public education program.

Peer Review

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three or more appropriate and independent specialists in order to solicit comments on the scientific data and assumptions underlying this proposed NEP designation. The purpose of such review is to ensure that the proposed NEP designation is based on the best scientific information available. We will invite these peer reviewers to comment during the public comment period and will consider their comments and information on this proposed rule during preparation of a final determination.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

If this proposal is adopted, the area affected by this rule includes the State of Louisiana. Because NEP designation does not establish substantial new regulation of activities, we do not expect this rule would have any significant effect on recreational, agricultural, or development activities. Although the entire proposed NEP boundary encompasses a large area, the section of the proposed NEP area where we can anticipate the establishment of an experimental population of nonmigratory whooping cranes is mainly public land owned by the State of Louisiana. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take in the special rule, we do not expect this rule to have significant effects on any activities within Tribal, Federal, State, or private lands within the proposed NEP.

On National Wildlife Refuges and units of the National Park System within the NEP, Federal action agencies would be required to consult with us, under section 7(a)(2) of the Act, on any of their activities that may affect the whooping crane. In portions of the NEP outside of National Wildlife Refuge and National Park Service lands, in regard to section 7(a)(2), the population is treated as proposed for listing and Federal action agencies are not required to consult on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. But because the NEP is, by definition, not essential to the continued existence of the species, conferring will likely never be required for the whooping crane population within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the whooping crane, but we do not expect projects to be halted or substantially modified as a result of these regulations.

The principal activities on private property near the expected reestablishment area in the NEP are agriculture, ranching, oil and gas exploration and extraction, and recreation. The presence of whooping cranes would likely not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of whooping cranes. Therefore, this rulemaking is not expected to have any significant adverse impacts to recreation, agriculture, oil and gas exploration or extraction, or any development activities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule would not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that, if adopted, this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. Small governments would not be affected because the proposed NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a

"significant regulatory action" under the Unfunded Mandates Reform Act). This proposed NEP designation for whooping crane would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. This rule would allow for the taking of reintroduced whooping cranes when such take is incidental to an otherwise legal activity, such as recreation (*e.g.,* fishing, boating, wading, or swimming), agriculture, oil and gas exploration and extraction, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe the reintroduction of whooping cranes would conflict with existing human activities or hinder use of private and public lands or hinder subsurface mineral rights such as oil and gas exploration and extraction within the proposed NEP area.

A takings implication assessment is not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed bird species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Louisiana. Achieving the recovery goals for this species will contribute to its eventual delisting and return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected.

The proposed special rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Louisiana. We have cooperated with LDWF in the preparation of this proposed rule. Therefore, this proposed rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This proposed rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84(p)(6)) and assigned control number 1018–0095, which expires March 31, 2011.

National Environmental Policy Act

We have prepared a draft environmental assessment as defined by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* It is available from the Lafayette Field Office (*see* **ADDRESSES**) and *http://www.regulations.gov.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 229511), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on and have notified the Native American Tribes within the NEP area about this proposal. They have been advised through verbal and written contact, including informational mailings from the Service. If future activities resulting from this proposed rule may affect Tribal resources, a Plan of Cooperation will be developed with the affected Tribe or Tribes.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Lafayette Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authors

The principal authors of this rule are Bill Brooks, of the Jacksonville, Florida, Field Office; and Deborah Fuller, of the Lafayette, Louisiana, Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S. C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the existing entry for "Crane, whooping" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Crane, whooping	*Grus americana*	Canada, U.S.A. (Rocky Mountains east to Carolinas), Mexico.	Entire, except where listed as an experimental population.	E	1, 3	17.95(b)	NA
Do	.....do	.....do	U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA,WI, WV, western half of WY).	XN	487, 621, 710, ____	NA	17.84(h)

3. Amend § 17.84 by revising paragraph (h) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(h) Whooping crane *(Grus americana).*

(1) The whooping crane populations identified in paragraphs (h)(9)(i) through (iv) of this section are nonessential experimental populations (NEPs) as defined in § 17.80.

(i) The only natural extant population of whooping cranes, known as the Aransas/Wood Buffalo National Park population, occurs well west of the Mississippi River. This population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of the Wood Buffalo National Park, and winters along the Central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge.

(ii) No natural populations of whooping cranes are likely to come into contact with the NEPs set forth in paragraphs (h)(9)(i) through (iv) of this section. Whooping cranes adhere to ancestral breeding grounds, leaving little possibility that individuals from the extant Aransas/Wood Buffalo National Park population will stray into the NEPs. Studies of whooping cranes have shown that migration is a learned rather than an innate behavior.

(2) No person may take this species in the wild in the experimental population areas except when such take is accidental and incidental to an otherwise lawful activity, or as provided in paragraphs (h)(3) and (4) of this section. Examples of otherwise lawful activities include, but are not limited to, oil and gas exploration and extraction, aquacultural practices, agricultural practices, pesticide application, water management, construction, recreation, trapping, or hunting, when such activities are in full compliance with all applicable laws and regulations.

(3) Any person with a valid permit issued by the Fish and Wildlife Service (Service) under § 17.32 may take whooping cranes in the wild in the experimental population areas for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) Any employee or agent of the Service or State wildlife agency who is designated for such purposes, when acting in the course of official duties, may take a whooping crane in the wild in the experimental population areas if such action is necessary to:

(i) Relocate a whooping crane to avoid conflict with human activities;

(ii) Relocate a whooping crane that has moved outside any of the areas identified in paragraphs (h)(9)(i) through (iv) of this section, when removal is necessary or requested and is authorized by a valid permit under § 17.22;

(iii) Relocate whooping cranes within the experimental population areas to improve survival and recovery prospects;

(iv) Relocate whooping cranes from the experimental population areas into captivity;

(v) Aid a sick, injured, or orphaned whooping crane; or

(vi) Dispose of a dead specimen or salvage a dead specimen that may be useful for scientific study.

(5) Any taking pursuant to paragraphs (h)(3) and (4) of this section must be immediately reported to the National Whooping Crane Coordinator, U.S. Fish and Wildlife Service, P.O. Box 100, Austwell, Texas 77950 (Phone: 361–286–3559), who, in conjunction with his counterpart in the Canadian Wildlife Service, will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (h)(2) through (6) of this section.

(8) The Service will not mandate any closure of areas, including National Wildlife Refuges, during hunting or conservation order seasons or closure or modification of hunting or conservation order seasons in the following situations:

(i) For the purpose of avoiding take of whooping cranes in the NEPs identified in paragraphs (h)(9)(i) through (iv) of this section;

(ii) If a clearly marked whooping crane from the NEPs identified in paragraphs (h)(9)(i) through (iv) of this section wanders outside the designated NEP areas. In this situation, the Service will attempt to capture the stray bird and return it to the appropriate area if removal is requested by the State.

(9) All whooping cranes found in the wild within the boundaries listed in paragraphs (h)(9)(i) through (iv) of this section will be considered nonessential experimental animals. Geographic areas the nonessential experimental populations may inhabit are within the historic range of the whooping crane in the United States and include the following:

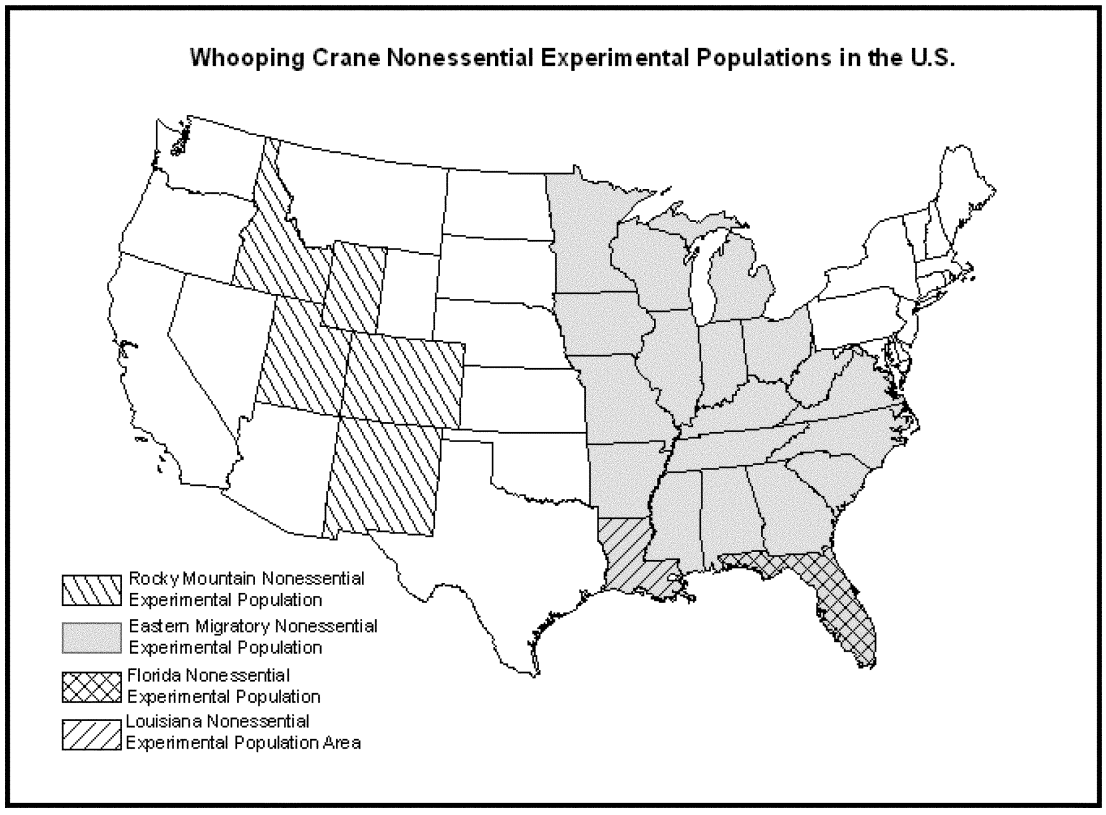
(i) The entire State of Florida (the Kissimmee Prairie NEP). The reintroduction site is the Kissimmee Prairie portions of Polk, Osceola, Highlands, and Okeechobee Counties. The experimental population released at Kissimmee Prairie is expected to remain mostly within the prairie region of central Florida.

(ii) The States of Colorado, Idaho, New Mexico, Utah, and the western half of Wyoming (the Rocky Mountain NEP).

(iii) That portion of the eastern contiguous United States which includes the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin (the Eastern Migratory NEP). Whooping cranes within this population are expected to occur mostly within the States of Wisconsin, Illinois, Indiana, Kentucky, Tennessee, Georgia, and Florida. The additional States included within the experimental population area are those expected to receive occasional use by the cranes, or which may be used as breeding or wintering areas in the event of future population expansion.

(iv) The entire State of Louisiana (the Louisiana Nonmigratory NEP). The reintroduction site is the White Lake Wetlands Conservation Area of southwestern Louisiana in Vermilion Parish. Current information indicates that White Lake is the historic location of a resident, nonmigratory population of whooping cranes that bred and reared young in Louisiana. Whooping cranes within this nonmigratory population are expected to occur mostly within the White Lake Wetlands Conservation Area and the nearby wetlands in Vermilion Parish. The marshes and wetlands of southwestern Louisiana are expected to receive occasional use by the cranes and may be used in the event of future population expansion.

(v) A map of all NEP areas in the United States for whooping cranes follows:



(10) The reintroduced populations will be monitored during the duration of the projects by the use of radio telemetry and other appropriate measures. Any animal that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State wildlife personnel or their designated agent and given appropriate care. Such animals will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive-breeding facility.

(11) The Service will reevaluate the status of the experimental populations periodically to determine future

management needs. This review will take into account the reproductive success and movement patterns of the individuals released within the experimental population areas.

* * * * *

Dated: August 9, 2010.

Jane Lyder,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–20522 Filed 8–18–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AY92

Fisheries in the Western Pacific; Hawaii Bottomfish and Seamount Groundfish; Management Measures for Hancock Seamounts to Rebuild Overfished Armorhead

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery ecosystem plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the fishery ecosystem plan (FEP) for Hawaii. If approved by the Secretary of Commerce (Secretary), Amendment 2 would continue a moratorium on fishing at Hancock Seamounts for armorhead (Pseudopentaceros wheeleri) and other bottomfish and seamount groundfish until the armorhead stock is rebuilt, establish a minimum rebuilding time of 35 years for the U.S. portion of the armorhead stock, and classify the portion of the U.S. Exclusive Economic Zone (EEZ) around the Hancock Seamounts as an ecosystem management area. The intent of this amendment is to rebuild the overfished armorhead stock.

DATES: Comments on the amendment must be received by October 18, 2010.

ADDRESSES: Comments on the amendment, identified by 0648–AY92, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or
- Mail: Mail written comments to Michael D. Tosatto, Acting Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of these two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. Comments will be posted for public viewing after thecomment period has closed. All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "NA" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 2, containing an environmental assessment and background information, are available from *www.regulations.gov* and from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or web site *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: This document is also available at *www.gpoaccess.gov/fr*.

Fishing for pelagic armorhead is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP). Armorhead are overfished as a result of over-exploitation by foreign vessels in international waters, dating back to at least the 1970s. Although there has never been a U.S. fishery targeting this fish, continued exploitation outside the EEZ by foreign fleets has kept the stock in an overfished condition.

The Hancock Seamounts are the only known armorhead habitat within the U.S. Exclusive Economic Zone (EEZ). These seamounts lie west of 180° W. and north of 28° N., to the northwest of Kure Atoll in the Northwestern Hawaiian Islands. The Council and NMFS have responded to the overfished condition of armorhead with a series of four, 6-year domestic fishing moratoria at the Hancock Seamounts, beginning in 1986. The current 6-year moratorium expires on August 31, 2010.

The Council developed Amendment 2 to establish armorhead rebuilding requirements pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The Council recommended in Amendment 2 that NMFS extend the moratorium at Hancock Seamounts until the armorhead stock is rebuilt, and establish a minimum rebuilding time of 35 years for the U.S. portion of the armorhead stock. The Council also recommended that NMFS classify the portion of the EEZ surrounding the Hancock Seamounts as an ecosystem management area to facilitate research on armorhead and other seamount groundfish.

Public comments on Amendment 2 must be received by October 18, 2010 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. A proposed rule to implement the measures recommended in the amendment has been prepared for Secretarial review and approval. NMFS expect to publish and request public comment on the proposed rule in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–20625 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 160

Thursday, August 19, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) Discuss Meeting Schedule, (7) Discuss Funding and Future Projects, (8) Discuss New Membership, (9) Next Agenda.

DATES: The meeting will be held on August 26, 2010 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; E–Mail *rjero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 23, 2010 will have the opportunity to address the committee at those sessions.

Dated: August 11, 2010.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2010–20403 Filed 8–18–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Manti-La Sal National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Manti-La Sal National Forest Resource Advisory Committee will meet in Price, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held September 22, 2010, and will begin at 9 a.m.

ADDRESSES: The meeting will be held in the conference room of the Utah Division of Wildlife Resources Building, 319 North Carbon Avenue, Price, Utah. Written comments should be sent to Rosann Fillmore, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Comments may also be sent via e-mail to *rdfillmore@fs.fed.us* or via facsimile to 435–637–4940.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501. Visitors are encouraged to call ahead to 435–636–3525 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rosann Fillmore, RAC coordinator, USDA, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501; 435–636–3525; E-mail: *rdfillmore@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introduction of Members, (2) Operating Procedures, (3) Roles and Responsibilities, (4) Receive Materials explaining the process for considering and recommending Title II projects; and (5) Public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 17, 2010 will have the opportunity to address the Comittee at those sessions.

Dated: August 13, 2010.

Marlene Depietro,

Acting Forest Supervisor.

[FR Doc. 2010–20558 Filed 8–18–10; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, August 27, 2010; 11:30 a.m. EDT.

PLACE: Via Teleconference, Public Dial In: 1–800–597–7623, Conference ID # 94458880.

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda

II. Program Planning

- New Black Panther Party Enforcement Project
- Sex Discrimination in Liberal Arts College Admissions Project
- Timeline for Briefing Report on English-Only in the Workplace

III. State Advisory Committee Issues

- Wyoming SAC

III. Approval of August 13 Meeting Minutes

IV. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact

Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: August 17, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–20752 Filed 8–17–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 8, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–052. *Applicant:* Argonne National Laboratory, UChicago Argonne, LLC, 9700 South Cass Avenue, Lemont, IL 60439. *Instrument:* Pilatus 2M Pixel Detector System. *Manufacturer:* Dectris Ltd., Switzerland. *Intended Use:* The instrument will be used to obtain fine structural information for materials during chemical reactions, such as catalysis. The instrument has gatable data processing as well as high time resolution and high spatial resolution, which makes the instrument unique. Other unique features include direct detection of x-rays in single-photon-counting mode, a radiation-tolerant design, a high dynamic range, a short readout time, high frame rates, high counting rates, and shutterless operation. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* July 23, 2010.

Docket Number: 10–053. *Applicant:* Argonne National Laboratory, UChicago Argonne, LLC, 9700 South Cass Avenue, Lemont, IL 60439. *Instrument:* UHV low-Temperature Atomic Force Microscope System for Application in High Magnetic Fields. *Manufacturer:* Omicron Nanotechnology, Germany. *Intended Use:* The instrument will be used to study atomic scale electrical and magnetic properties of electrically conduction as well as insulation nanostructures prepared by in situ deposition onto clean surfaces. In-situ capacities allow the preparation of clean and well-defined nanostructures on pristine surfaces which would contaminate otherwise. Unique features of this instrument include the capability of applying large magnetic fields (≤3 Tesla), which is necessary to allow the clear separation of structural, electronic, and magnetic signals of nanostructures and the evaluation of the properties to be studied in these experiments. The instrument also has in-situ preparation capability and the ability to operate in low temperatures. Further, the instrument is capable of performing imaging in two main modes of operation, *i.e.,* scanning tunneling microscopy and atomic force microscopy. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* July 21, 2010.

Dated: August 11, 2010.

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–20613 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Massachusetts Amherst, *et al.*; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

Docket Number: 10–044. *Applicant:* University of Massachusetts Amherst, Amherst, MA 01003. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use: See* notice at 75 FR 42377, July 21, 2010.

Docket Number: 10–047. *Applicant:* Appalachian State University, Boone, NC 28608. *Instrument:* Electron Microscope.

Manufacturer: JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 42377, July 21, 2010.

Docket Number: 10–048. *Applicant:* The University of Texas at El Paso, El Paso, TX 79968. *Instrument:* Electron Microscope. Manufacturer: JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 42377, July 21, 2010.

Docket Number: 10–050. *Applicant:* Stanford University School of Medicine, Stanford, CA 94305–5301. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 42377, July 21, 2010.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: August 12, 2010.

Christopher Cassel,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–20616 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee; Notice of Public Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (C–SAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: September 22–24, 2010. On September 22, the meeting will begin at approximately 1 p.m. and adjourn at approximately 5 p.m. On September 23, the meeting will begin at approximately at 8:30 a.m. and adjourn at 5 p.m. On September 24, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Members of the C–SAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Dated: August 11, 2010.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2010–20524 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY24

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee, in September, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, September 7, 2010 at 9 a.m.

ADDRESSES: This meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review testimony from Amendment 15 public hearings and written comments on the Amendment 15 DEIS and public hearing document. The Committee will also discuss several outstanding issues related to Amendment 15 that need further clarification. For example, a possible restriction for permits that de-stack, a measure to address possible overages of yellowtail flounder catch in 2010 in the scallop fishery, and further clarifications about new monitoring requirements for annual catch limits in the scallop fishery. In addition, the Committee will discuss possible modifications to the current overfishing definition that may be considered in Amendment 15 based on results from the recent stock assessment. If time permits the Committee may discuss other issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–20545 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY28

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet September 10–16, 2010. The Pacific Council meeting will begin on Saturday, September 11, 2010, at 8 a.m., reconvening each day through Thursday, September 16, 2010. All meetings are open to the public, except a closed session, which will be held from 8 a.m. until 9 a.m. on Saturday, September 11 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the Doubletree Hotel Riverside, 2900 Chinden Boulevard, Boise, ID 83714; telephone: 208–343–1871. The Pacific Council address is Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204 toll free; or access the Pacific Council website, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Council Member Appointments
3. Roll Call
4. Executive Director's Report
5. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Salmon Management

1. 2010 Salmon Methodology Review
2. Fishery Management Plan a.m.endment 16, Annual Catch Limits and Accountability Measures
3. Mitchell Act Hatchery Environmental Impact Statement
4. National Marine Fisheries Service Report
5. Salmon Essential Fish Habitat Review

D. Pacific Halibut Management

1. 2010 Pacific Halibut Regulations
2. Proposed Procedures for Estimating Pacific Halibut Bycatch in the Groundfish Fisheries
3. Initial Consideration of Proposed Changes to Pacific Halibut Allocation for Bycatch and Catch Sharing in the Groundfish Fisheries

E. Habitat

1. Current Habitat Issues
2. National Marine Fisheries Service National Habitat Plan Briefing

F. Marine Protected Areas

1. Update and Further Review of the National System of Marine Protected Areas

G. Administrative Matters

1. Briefing on Marine Spatial Planning
2. Legislative Matters
3. Approval of Council Meeting Minutes
4. Fiscal Matters
5. Membership Appointments and Council Operating Procedures
6. Future Council Meeting Agenda and Workload Planning

H. Ecosystem Management

1. Ecosystem Fishery Management Plan

I. Groundfish Management

1. Groundfish Essential Fish Habitat Review
2. Consideration of Inseason Adjustments
3. Preliminary Review of Exempted Fishing Permits for 2011
4. National Marine Fisheries Service Report
5. Status and Follow-up on Implementation of Adendment 20 (Trawl Rationalization) and Amendment 21 (Intersector Allocation)
6. Potential Trailing Actions to Amendment 20 on Trawl Rationalization
7. Further Consideration of Inseason Adjustment, if Necessary

J. Coastal Pelagic Species Management

1. Terms of Reference for Stock Assessment and Methodology Review Panels

K. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. Changes to Routine Management Measures for 2011–2012
3. Recommendations to International Fishery Management Organizations

SCHEDULE OF ANCILLARY MEETINGS

Friday, September 10, 2010	
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team/Salmon Amendment Committee Joint Session	8 a.m.
Scientific and Statistical Committee	8 a.m.
Budget Committee	1 p.m.
Legislative Committee	2:30 p.m.
Saturday, September 11, 2010	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Enforcement Consultants	4:30 p.m.
Council Chair's Reception	6 p.m.
Sunday, September 12, 2010	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.
Enforcement Consultants	As Necessary
Monday, September 13, 2010	a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Necessary
Tuesday, September 14, 2010	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	As Necessary
Wednesday, September 15, 2010	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	As Necessary
Thursday, September 16, 2010	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Enforcement Consultants	As Necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: August 16, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–20547 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY25

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 2 Update Assessment data conference call for South Atlantic Black Sea Bass.

SUMMARY: The SEDAR Update Assessment of the South Atlantic stock of black sea bass will consist of a conference call and four webinars. This is an Update of the second SEDAR stock assessment, completed in 2003. This is notice of the conference call component of the SEDAR 2 Update. See **SUPPLEMENTARY INFORMATION**.

DATES: The conference call will take place September 7, 2010. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The conference call may be attended by the public. Those interested in participating should contact Kari Fenske at SEDAR. See **FOR FURTHER INFORMATION CONTACT** to request conference call access information.

FOR FURTHER INFORMATION CONTACT: Kari Fenske, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *kari.fenske@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR Updates include a discussion of data, a Stock Assessment Process and a Review by the South Atlantic Science and Statistical Committee. The product of the Update Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops and Assessment Process are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils; the Atlantic and Gulf States Marine Fisheries Commissions; and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 2 Update conference call schedule:

September 7, 2010: 1 p.m.—4 p.m.

Assessment panelists will discuss data inputs to the stock assessment model and make recommendations for additional years of data to be updated in the model. New information on black sea bass life history may be considered and recommended for use in the update.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 3 business days prior to each workshop.

Dated: August 16, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–20546 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 20, 2010, the Department of Commerce ("the Department") initiated an antidumping duty investigation on Aluminum Extrusions from the People's Republic of China.[1] The notice of initiation stated that, unless postponed, the Department would issue its preliminary determination no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the Act"). The preliminary determination is currently due no later than September 7, 2010.

On August 4, 2010, the Aluminum Extrusions Fair Trade Committee (comprised of Aerolite Extrusion Company, Alexandria Extrusion Company, Benada Aluminum of Florida, Inc., William L. Bonnell Company, Inc., Frontier Aluminum Corporation, Futura Industries Corporation, Hydro Aluminum North America Inc., Kaiser Aluminum Corporation, Profile Extrusion Company, Sapa Extrusions, Inc., and Western Extrusions Corporation) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners"), made a timely request, pursuant to 19 CFR 351.205(b)(2) and (e), for a postponement of the preliminary determination, in order to allow additional time for the review of questionnaire responses.[2] Because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination by 50 days to no later than October 27, 2010. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 11, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–20582 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Mission to the Port of Veracruz

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing an executive-led trade mission to the Port of Veracruz, Mexico, for December 6–9, 2010. This mission is intended to include representatives of a variety of U.S. industry and service providers, particularly those in the transportation, security, and infrastructure industries. The mission will introduce mission participants to end-users and prospective partners whose needs and capabilities are targeted to the respective U.S. participant's strengths. Participating in an official U.S. industry delegation, rather than traveling to the Port of Veracruz independently, will enhance the companies' ability to secure meetings with the port authorities and the private terminal operators, and provide an opportunity to them to tour the port facilities. The mission will include meetings with Port of Veracruz operators, industry groups, and local companies in Veracruz interested in partnering with U.S. companies.

Commercial Setting

The Port of Veracruz is undergoing an expansion project to increase its efficiency and productivity. The project will take about 15–20 years to be completed, and will require investments of over US $1.2 billion. This includes the construction of new port facilities in the Vergara Bay, just next to the current port location. This project was listed as a strategic priority in the National Infrastructure Program announced by President Calderon in July 2007.

In the last 2–3 years, the Port of Veracruz has invested in modifying the current facilities to expand general cargo and container capacity, and to increase efficiency in all port activities, including new facilities for customs and modern gamma ray inspection and detection equipment, security and surveillance systems, expanding berths, building a 13-kilometer bypass for the City of Veracruz, improving railroad access, improving intra-port transit roads and remodeling the administration building. At the same time, private operators have invested in modern equipment and IT systems for their facilities.

The Port of Veracruz Integral Administration (APIVER) recently inaugurated an industrial and logistical area of 307 hectares, located 2.5 kilometers north of the port's precinct. About 173 hectares will be dedicated to building nine logistics centers for containers, agricultural and bulk minerals, general cargo, intermodal transfer, an automotive logistics center, and related services. This facility has an estimated cost of US $600 million.

Other ongoing or upcoming projects included in the port expansion include:

—Building new yards and wharfs for containers, automotive products and grains;
—Building a new wharf for tourist use;
—Modernizing the surrounding infrastructure including roads, rail, electrical, hydraulic, and sanitary systems, and IT and telecommunications systems;
—Increasing the capacity and efficiency of the port itself through renovated drainage, electrical, and water systems;
—Increasing vehicle handling capacity;
—Developing a new container terminal for post-Panama ships;

[1] *See Aluminum Extrusions from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 75 FR 22109 (April 27, 2010).

[2] *See* letter from Petitioners, "Antidumping Duty Investigation on Certain Aluminum Extrusions From China: Requests To Postpone The Preliminary Determination And To Extend The Deadlines For Comments On Surrogate Country Selection And Surrogate Factor Valuation," August 4, 2010.

—Continuous dredging in the basin, channels and wharves to maintain an adequate depth.

The APIVER will also invest over US $50 million in port improvement including the construction of internal railways during 2010. Private port operators also have their own projects for improving facilities and efficiency. Some are waiting for the port expansion to obtain new areas in which to expand their own facilities.

Several products and services expected to have high demand from port authorities and operators include:

—CCTV surveillance systems;
—Consulting services for: Efficiency in logistics systems, civil protection and safety, financial and statistical planning, waste collection and management, hazardous materials handling, maritime inspection, operations control, designing of refrigerated warehouses, etc.;
—Corrosion detection/protection equipment;
—Corrosion protection systems for cars and machinery parked at the port;
—Digital signature systems;
—Equipment for refrigerated warehouses;
—Machinery/equipment maintenance systems;
—Outdoor lighting systems;
—Pollution control systems;
—Pneumatic delivery systems;
—Software for inventory tracking;
—Used mobile railcar movers or Trackmobile;
—Waste and toxic waste management systems.

Special Opportunities

The APIVER is currently building a 19-kilometer internal rail track that will be used by the two railroad companies servicing the port, Kansas City Southern Mexico and Ferromex. APIVER expects to issue a tender to grant a concession to operate this internal railway in late 2010. Companies interested in getting this concession should start looking for information on how to participate in the bid.

The State of Veracruz Government is currently building a sports marina that will include docks for different-sized ships, a club house, nautical services, a hotel and tourist services. The marina is expected to be opened early 2011, and a concession will be granted to a private operator.

Mission Goals

The short term goals of the Trade Mission to the Port of Veracruz are (1) To introduce U.S. companies to potential end-users, joint-venture partners and other industry representatives in the Port of Veracruz, and (2) to introduce U.S. companies to the industry and government officials in Mexico City and the Port of Veracruz to learn about various program opportunities in the port industry.

Mission Scenario

Upon arrival in Mexico City, the U.S. mission members will be invited to a networking welcome reception at the residence of the U.S. Ambassador, to meet key government and industry contacts in the Mexico City area important to ports infrastructure development at the national level. Participants will then depart to the Port of Veracruz, for a two-day program that will include technical visits with the private port operators and industrial groups in Veracruz, and a site visit to the Port of Veracruz facilities and to the site where the expansion project will be developed. During the meetings, participating companies will have the opportunity to make a 5–8 minute presentation of their products and services and later meet one-on-one with interested clients/partners.

Matchmaking efforts will involve local companies in Veracruz interested in partnering with the U.S. firms. U.S. participants will be counseled before and after the mission by the USCS Mexico City officers and commercial specialists. The following items are included in the price of the trade mission:

—Pre-travel webinar briefing, covering Mexican business practices and security.
—Welcome kit with general information about the State of Veracruz.
—Welcome reception at Ambassador's residence.
—Transportation between Mexico City and Veracruz, by bus.
—Lunch with Veracruz industry leaders.
—Networking reception with industry contacts.
—Breakfast with Port of Veracruz operators.
—Technical visit to the Port of Veracruz facilities.
—Reception with State of Veracruz Government officers, port operators and industry contacts.
—Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in the Port of Veracruz.

Proposed Timetable

The mission program will begin on the evening of December 6, 2010 and continue through the evening of December 9, 2010.

December 6—Mexico City

Welcome Reception at Ambassador's Residence

December 7—Mexico City-Port of Veracruz

Breakfast on their own
Trip to the Port of Veracruz
Lunch with industry group leaders
Meetings with industry groups
Networking reception with key industry contacts

December 8—Port of Veracruz

Breakfast meeting with Port of Veracruz operators
Technical visit to the Port of Veracruz
Lunch on their own
Free time for further meetings with interested parties
Reception with Government officers, port operators and industry contacts

December 9—Port of Veracruz

Breakfast on their own
One-on-one meetings with potential distributors/representatives
Lunch on their own
Return trip to Mexico City

Participation Requirements

All parties interested in participating in the Trade Mission to the Port of Veracruz must complete and submit an application for consideration by U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and to satisfy the selection criteria as outlined below. This mission has a goal of a minimum of 12 and a maximum of 15 companies to be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Mexico as well as U.S. companies seeking to enter the market for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be US $3,100 for large firms and $2,500 for a small or medium-sized enterprise (SME) [1] or small organization, which will cover one representative. The fee for each additional firm representative (large

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

firm or SME) is $350. Expenses for travel to Mexico City, lodging, most meals, and incidentals will be the responsibility of each mission participant. However, the roundtrip bus from Mexico City to Veracruz will be covered by the participation fee.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals
- Applicant's potential for business in Mexico, including likelihood of exports resulting from the trade mission
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission (*i.e.,* the sectors indicated in the mission description)

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, the Maritime Technologies Team, industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than October 15, 2010. CS Mexico City will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after October 15, 2010. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Mexico

Contacts:

Ms. Dinah McDougall, U.S. Commercial Service Mexico, Tel: (011–52–55) 5140–2620, *dinah.mcdougall@trade.gov.*

Ms. Alicia Herrera, U.S. Commercial Service Mexico, Tel: (011–52–55) 5140–2629, *Alicia.herrera@trade.gov.*

Ryan Kane,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–20535 Filed 8–18–10; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0088]

Agency Information Collection Activities; Proposed Collection; Comment Request; Durable Nursery Products Exposure Survey

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 ("the PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a draft survey regarding ownership and use characteristics of durable infant or toddler products.

DATES: Submit written or electronic comments on the collection of information by October 18, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0088, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* A copy of the draft survey is available at *http://www.regulations.gov* under Docket No. CPSC–2010–0088, Supporting and Related Materials.

FOR FURTHER INFORMATION CONTACT: Linda L. Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7671. *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CPSC is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, the CPSC invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility; (2) the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

On August 14, 2008, the Consumer Product Safety Improvement Act ("CPSIA") (Pub. L. 110–314) was enacted. Section 104 of the CPSIA (referred to as the "the Danny Keysar Child Product Safety Notification Act") (15 U.S.C. 2056a), requires the Commission to study and develop safety standards for infant and toddler products. Such durable infant and toddler products include, but are not limited to: Full-size cribs and non full-size cribs; toddler beds; high chairs, booster chairs, and hook-on chairs; bath seats; gates and other enclosures for confining a child; play yards; stationary activity centers; infant carriers; strollers; walkers; swings; and bassinets and cradles. The Commission is required to evaluate the currently existing voluntary standards for durable infant or toddler products and promulgate a mandatory standard substantially the same as, or more stringent than, the applicable voluntary standard.

In evaluating the current voluntary standards, the CPSC staff requires certain additional data to assess the potential future impacts of the CPSIA mandatory efforts on durable infant and toddler products. The draft Durable Nursery Products Exposure Survey ("DNPES" or "survey") is a national probability sample of households with children five years old and under designed to determine the prevalence of durable infant and toddler product ownership in households, as well as the frequency and manner of use of such products. In particular, the survey will seek information regarding ownership characteristics, the life cycle of the products, and consumer behaviors and perceptions regarding such products. The survey will gather information on the characteristics and usage patterns of 24 categories of durable infant or toddler products and solicit information on accidents or injuries associated with those products. The information collected from the DNPES will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. In addition to assisting the Commission's rulemaking efforts, such information will also support ongoing voluntary standards activities in which the Commission participates, compliance and enforcement efforts as well as information and education campaigns. The data also will help identify consumer safety issues that need additional research. Understanding better how these products are used by consumers will help the Commission address potential hazards and assess the sufficiency of current voluntary standards.

Before the mail paper screener is sent out, a small group of respondents (37) from different backgrounds (including both English and Spanish speakers) will be asked to participate in cognitive testing (for the telephone survey) or usability testing (for the Web version of the survey) to provide extensive feedback regarding the clarity of specific questions. Results of the cognitive and usability testing will be used to revise the survey instruments, but will not be included in the survey results for the main data collection. Following the testing, a mail paper screener will be sent to 16,667 families to determine whether sampled respondents are eligible for full DNPES participation. Eligible respondents who have children aged 0–5 in their household will have Web and computer-assisted telephone interviewing ("CATI") survey options for completing the full extended DNPES. The DNPES will include approximately 24 categories with questions about different infant or toddler products, but each respondent will be limited to a maximum of four categories. The CATI and Web programs will also ensure that each respondent's questions are limited to the portions of the survey for which they have been selected.

We estimate the burden of this collection of information as follows. Each cognitive interview or usability test will take approximately one hour for an estimated total of 37 burden hours. The initial mail paper screener for the main data collection will be sent to approximately 16,667 households and will take approximately five minutes (.0833 hours) to complete. An estimated 2,000 eligible repondants will be selected for telephone extended interviews (1,500 respondents) or Web surveys (500 respondents) and each will take approximately 30 minutes (.5 hours) to complete. The total estimated burden for all respondents is 2,425.92 hours, rounded up to 2,426 hours. The total cost to the respondents for the total burden is estimated to be $66,520.92, rounded up to $66,521, based on an hourly rate of $27.42 (all workers in private industry in Table 9 of the December 2009 Employer Costs for Employee Compensation, Bureau of Labor Statistics).

The estimated cost to the Federal Government is $1,026,763. Since the study extends over three years, however, the estimated annualized cost of the information collection requirements to the government is $342,254.33, rounded down to $342,254, for the three year period. This sum includes contractors to implement and conduct the DNPES survey ($729,093), 21 staff months ($297,670) at an average level of GS–14 step 5 ((($119,238/.701) ÷ 12 months) × 21 months), using a 70.1 percent ratio of wages and salary to total compensation from Table 1 of the December 2009 Employer Costs for Employee Compensation, published on the Bureau of Labor Statistics.

Dated: August 13, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–20596 Filed 8–18–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0087]

Petition Requesting Regulations Restricting Cadmium in Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("Commission" or "CPSC") has received a petition requesting standards restricting cadmium in children's products, especially toy metal jewelry. The Commission invites written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by October 18, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0087, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rocky Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Empire State Consumer Project, Sierra Club, Center for Environmental Health, and Rochesterians Against the Misuse of Pesticides ("petitioners") submitted a petition stating that the Commission should issue regulations to ban cadmium in all toy jewelry under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Specifically, petitioners request that the Commission adopt regulations declaring that any toy metal jewelry containing more than trace amounts of cadmium by weight which could be ingested by children be declared a banned hazardous substance. If the Commission finds that it lacks sufficient information to determine the appropriate level of cadmium in products, petitioners request that the Commission, as an interim measure, adopt the maximum levels established for lead. In addition, petitioners request a test method based on total cadmium, which simulates a child chewing the jewelry before swallowing by cutting the metal jewelry in half, and evaluating the extractability of cadmium from children's metal jewelry based on a 24-hour acid extraction period. Petitioners also assert that if the CPSC has insufficient information regarding cadmium, it should obtain additional information under the Interagency Testing Commission ("ITC") through the Toxic Substances Control Act ("TSCA") administered by the Environmental Protection Agency ("EPA") to include metal jewelry in the scope of reporting under section 8(d) of the TSCA and require importers and processers to test toy metal jewelry for cadmium.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833. The petition is also available at *http://www.regulations.gov* under Docket No. CPSC–2010–0087, Supporting and Related Materials.

Dated: August 13, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–20599 Filed 8–18–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11 a.m. to 12 p.m. on September 13, 2010, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel-related issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open sessions of the meeting will be held on September 13th, 2010, from 8 a.m. to 11 a.m. The closed session of this meeting will be the executive session held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Dirksen Senate Office Building, Room 406, Washington, DC. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David S. Forman, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11 a.m. to 12 p.m. on September 13, 2010, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include, but not limited to, individual honor/conduct violations within the Brigade, and personnel-related issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to 12 p.m. will be concerned with matters coming under sections 552b(c)(5), (6), and (7) of Title 5, United States Code.

Dated: August 13, 2010.

H.E. Higgins,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2010–20578 Filed 8–18–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future, Disposal Subcommittee

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Disposal Subcommittee. The Disposal Subcommittee is a subcommittee of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The establishment of subcommittees is authorized in the Commission's charter. The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.

770) (the Act). This notice is provided in accordance with the Act.

DATES: Wednesday, September 1, 2010 8:30 a.m.–5 p.m.

ADDRESSES: Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy A. Frazier, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4243 or facsimile (202) 586–0544; e-mail *CommissionDFO@nuclear.energy.gov*. Additional information will be available at *http://www.brc.gov*.

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste.

The Co-chairs of the Commission requested the formation of the Disposal Subcommittee to answer the question: "[h]ow can the U.S. go about establishing one or more disposal sites for high-level nuclear wastes in a manner that is technically, politically and socially acceptable?"

Purpose of the Meeting: The meeting will focus on standardization and regulations for deep geological disposal. Topics to be discussed during the meeting include essential elements of technically credible, workable, and publicly acceptable regulations for disposal in geologic repositories; as well as essential elements of a technically credible and publicly acceptable institutional system and process for regulating the safety of disposal.

Tentative Agenda: The meeting is expected to start at 8:30 a.m. on September 1, 2010 with panel presentations beginning at 8:45 a.m. and ending at 4:15 p.m. with a public comment period from 4:15 p.m. through 5 p.m.

Public Participation: Subcommittee meetings are not required to be open to the public; however, the Commission has elected to open the presentation sessions of the meeting to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the public session on Wednesday, September 1, 2010. Approximately 45 minutes will be reserved for public comments from 4:15 p.m. to 5 p.m. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 7:30 a.m. on September 1, 2010, at the Washington Marriott. Registration to speak will close at noon, September 1, 2010.

Those not able to attend the meeting or have insufficient time to address the subcommittee are invited to send a written statement to Timothy A. Frazier, U.S. Department of Energy 1000 Independence Avenue, SW., Washington DC 20585, e-mail to *CommissionDFO@nuclear.energy.gov,* or post comments on the Commission Web site at *http://www.brc.gov*.

Additionally, the meeting will be available via live video webcast. The link will be available at *http://www.brc.gov*.

Minutes: The minutes of the meeting will be available at *http://www.brc.gov* or by contacting Mr. Frazier. He may be reached at the postal address or e-mail address above.

Issued in Washington, DC on August 13, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–20573 Filed 8–18–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 16, 2010 from 3:30 to 4:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Senior Management Technical Advisor, Intergovernmental Projects, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Review and update of task force accomplishments, update on the status of a meeting with USDA to discuss Resolution 10–01, update regarding the recent meeting of the Energy Efficiency and Conservation Block Grant (EECBG) subcommittee, and provide an update to the Board on routine business matters and other topics of interest.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on August 13, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–20566 Filed 8–18–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision and Floodplain Statement of Findings; Kemper County IGCC Project, Kemper County, MS

AGENCY: U.S. Department of Energy.

ACTION: Record of Decision and Floodplain Statement of Findings.

SUMMARY: The Department of Energy (DOE) prepared an Environmental Impact Statement (EIS) (DOE/EIS–0409) to assess the environmental impacts associated with a proposed project designed, constructed, operated, and owned by Mississippi Power, a Southern Company subsidiary. The U.S. Army Corps of Engineers (USACE) was a cooperating agency in the preparation of this EIS. The project would demonstrate advanced power generation systems using Integrated Gasification Combined Cycle (IGCC) technology at an undeveloped site in Kemper County, MS. DOE's proposed action has two components: first, to provide cost-

shared financial assistance and, second, to issue a loan guarantee. After careful consideration of the potential environmental impacts and other factors such as program goals and objectives, DOE has decided that it will provide, through a cooperative agreement with Southern Company Services (SCS), also a Southern Company subsidiary, $270 million in cost-shared funding under DOE's Clean Coal Power Initiative (CCPI) program for the project. A separate decision would be made regarding the loan guarantee; DOE would announce that decision in a subsequent Record of Decision.

ADDRESSES: The Final EIS is available on the DOE National Environmental Policy Act (NEPA) Web site at *http://www.nepa.energy.gov/1445.htm* and on the DOE National Energy Technology Laboratory (NETL) Web site at *http://www.netl.doe.gov/technologies/coalpower/cctc/ccpi/bibliography/demonstration/adv-gen/ccpi_285-mw.html.* The Record of Decision (ROD) will be available on both Web sites soon. Copies of the Final EIS and this ROD may be obtained by contacting Mr. Richard A. Hargis, Jr., National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940; telephone: 412–386–6065; or e-mail: *Kemper-EIS@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the project or the EIS, contact Mr. Richard A. Hargis, Jr. at the addresses provided above. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone: 202–586–4600; or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared this ROD and Floodplain Statement of Findings pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA [40 Code of Federal Regulations (CFR) Parts 1500–1508], DOE NEPA regulations (10 CFR part 1021) and DOE's Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR part 1022). This ROD is based on DOE's Final EIS for the Kemper County IGCC Project (DOE/EIS–0409, May 2010) and other program considerations.

Background and Purpose and Need for Agency Action

Public Law 107–63, enacted in November 2001, first provided funding for the Clean Coal Power Initiative (CCPI) program, a Federal program to accelerate the commercial readiness of advanced technologies in existing and new coal-based power plants. The program encompasses a broad spectrum of commercial-scale demonstrations that target today's most pressing environmental challenges, including reducing mercury and greenhouse gas (GHG) emissions by boosting the efficiency at which coal is converted to electricity or other energy forms. When integrated with other DOE initiatives, the program will help the nation successfully commercialize advanced power systems that will produce electricity at greater efficiencies, release almost no emissions, create clean fuels, and employ carbon dioxide (CO_2) management capabilities.

The purpose of DOE's proposed action under the CCPI program is to demonstrate the feasibility of the Transport Integrated Gasification (TRIG™) IGCC technology at a size that would be attractive to utilities for commercial operation. DOE, Southern Company, Kellogg Brown & Root LLC, and other industrial proponents have been developing this technology since 1996. It is cost-effective when using low-heat content, high moisture, or high-ash content coals, including lignite. These coals constitute approximately one-half of proven coal reserves. A successful demonstration would generate technical, environmental, and financial data to confirm that the technology can be implemented at a commercial scale. Financial assistance from DOE would reduce the cost and financial risk in demonstrating that the technology is ready for commercialization.

The purpose of DOE's proposed action with regard to the Federal loan guarantee is to encourage early commercial use in the United States of new or significantly improved energy technology and to reduce or eliminate emissions of GHGs and other air pollutants pursuant to Title XVII of the Energy Policy Act of 2005 (EPAct).

Two principal needs are addressed by DOE's proposed actions. First, the project would satisfy the responsibility Congress imposed on DOE to demonstrate advanced coal-based technologies that can generate clean, reliable, and affordable electricity in the United States. Second, with regard to the Federal loan guarantee, this project would fulfill EPAct's objective of assisting projects that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of GHGs" and "employ new or significantly improved technologies as compared to technologies in service in the United States."

EIS Process

On September 22, 2008, DOE published a Notice of Intent (NOI) (73 FR 54569) to prepare the EIS and hold a public scoping meeting. DOE held a public scoping meeting in DeKalb, Mississippi, on October 14, 2008. The Department received oral responses at the meeting and other responses by comment card, mail, e-mail, and telephone from individuals, interested groups, and Federal, State, and local officials. On November 5, 2009, DOE published in the **Federal Register** (74 FR 57297) a Notice of Availability (NOA) for the Kemper County IGCC Project Draft EIS. The NOA invited comments on the Draft EIS. As part of the review process, DOE conducted a public hearing on December 1, 2009, in DeKalb, Mississippi. The public was encouraged to provide oral comments at the hearing and to submit written comments to DOE during a 45-day comment period that ended December 21, 2009. DOE received numerous comments; many resulted from e-mail campaign efforts of two non-governmental organizations.

DOE issued the Final EIS and the Environmental Protection Agency (EPA) published a NOA in the **Federal Register** on May 21, 2010 (75 FR 28612). In the Final EIS, DOE responded to comments on the Draft EIS. Among the issues raised in these comments were concerns about (1) DOE's statement of purpose and need; (2) the range of alternatives considered; (3) air pollutant emissions, emissions controls, and air quality impacts; (4) emissions of GHG and climate change effects; (5) surface water quality and downstream effects on the Pascagoula River and Gulf of Mexico; (6) stream restoration following mining; (7) increases in flood elevations and effects on floodplains; (8) wetlands impacts and mitigation; (9) hydrologic impacts, especially on Okatibbee Lake; (10) groundwater impacts and effects on drinking water supplies; (11) noise impacts; (12) mining impacts, including soils, and land reclamation; (13) wildlife impacts, including threatened and endangered species; (14) risks to human health from criteria and hazardous air pollutants, including mercury deposition and bioaccumulation; (15) socioeconomic and environmental justice impacts; (16) traffic impacts; (17)

land and right-of-way acquisition; and (18) effects on community resources.

Decision

DOE has decided to provide Mississippi Power with cost-shared funding of $270 million through a cooperative agreement with Southern Company Services to design, construct, and demonstrate the Kemper County IGCC Project.

Basis of Decision

DOE's decision is based on the importance of achieving the objectives of the Clean Coal Power Initiative and a careful review of the potential environmental impacts presented in the EIS. The project provides a significant opportunity to demonstrate a technology that can use the nation's abundant coal resources in a cost-effective and clean manner while reducing GHG emissions. The effective and clean use of domestic energy resources allows the United States to reduce its reliance on world markets for its energy supplies—reliance on these markets decreases national security. This technology also addresses concerns about the consequences of continuing to use fossil fuels without effectively managing their carbon emissions. The project incorporates controls that make its carbon emissions essentially equal to natural gas-based power generation. The key feature of the TRIG™ technology is its cost-effective use of low-rank coals, like Mississippi lignite, which constitutes nearly 50% of our nation's coal resource. DOE has reviewed and participated in the technology's development and believes that it is ready for commercial demonstration. Without this project, DOE would not have the opportunity to demonstrate this technology and make it available for the cost-effective and clean use of low rank coals.

The project would also have economic benefits to the region. Beyond the estimated combined construction payroll for the plant and mine of $145 million, there would be an estimated additional indirect benefit of $82 million and 186 additional jobs due to construction activities. The operation of the plant and mine would result in an estimated $25 million annual payroll, an indirect annual economic benefit of about $11.4 million, and approximately 97 new jobs.

This decision incorporates all practicable means to avoid or minimize environmental harm. DOE plans to verify the environmental impacts predicted in the EIS and the implementation of appropriate avoidance and mitigation measures.

Mitigation

DOE's decision incorporates measures to avoid or minimize adverse environmental impacts during the design, construction and demonstration of the project. DOE requires that the participants comply with all applicable Federal, State, and local environmental laws, orders, and regulations. Mitigation measures beyond those specified in permit conditions will be addressed in a Mitigation Action Plan (MAP). DOE will prepare the MAP, consistent with 10 CFR 1021.331, which will explain how the mitigation measures will be planned, implemented and monitored. The MAP is an adaptive management tool; mitigation conditions in it would be removed if equivalent conditions are otherwise established by permit, license, or law, as compliance with permit, license or regulatory requirements are not considered mitigation activities subject to DOE control and are therefore not included in MAPs.

DOE will ensure that commitments in the MAP are met through management of the cooperative agreement, which requires that Southern Company Services fulfills the monitoring and mitigation requirements specified in this ROD. DOE will make copies of the MAP available for inspection in the appropriate locations for a reasonable time. Copies of the MAP and any annual reports required under the MAP will also be available upon written request.

Project Description and Location

The power plant would be located on an approximately 1,650-acre site in southwestern Kemper County. The mine and linear facilities (*e.g.,* pipelines) would extend into several other counties. The power plant site and mine area are rural and sparsely populated. The electrical transmission lines and pipelines would also traverse mostly rural areas. Mississippi Power plans to acquire additional properties adjacent to the proposed power plant site for buffer areas. Approximately 1,400 acres of buffer areas immediately north and east of the site have been acquired, optioned, or identified for acquisition.

The IGCC plant consists of two major systems: Lignite coal gasification and combined-cycle power generation. The gasification systems consist primarily of lignite handling, gasification, and syngas processing and cleanup. There are two lignite gasifiers. At full capacity, the gasifiers would convert an average of 13,800 tons per day of lignite into syngas (synthesis gas). The principal combined-cycle components include two combustion turbines (CTs), two heat recovery steam generators (HRSG), and a steam turbine. In a combined-cycle unit, fuel gas is combusted in CTs, and its hot exhaust gas is then used to heat water to drive a steam turbine. The reuse of the CTs' exhaust heat to power a steam turbine constitutes the combined-cycle approach, which increases the amount of electricity that can be generated from a given amount of fuel.

The proposed project would reduce sulfur dioxide (SO_2), nitrogen oxides (NOx), mercury, and particulate emissions by removing them from the syngas. The removal of nearly 100 percent of the fuel-bound nitrogen from the syngas prior to combustion in the gas CTs would result in appreciably lower NOx emissions compared to conventional coal-fired plants. The facility would have carbon capture systems sufficient to reduce CO_2 emissions by approximately 67 percent by removing carbon from the syngas. The CO_2 would be compressed and piped offsite where it would be sold for beneficial use and geologic storage via enhanced oil recovery (EOR).

Connected actions are actions that are closely related to the proposed action and therefore are evaluated in the same EIS. The project's connected actions consist of construction and operation of a cooling water supply (*i.e.,* reclaimed effluent from municipal wastewater treatment) pipeline, a natural gas pipeline, associated transmission lines and substations, CO_2 pipelines, and a lignite mine. North American Coal Company would construct and operate the mine. The mine would be located next to the power plant site. The mine would be the primary source of feedstock for the IGCC project. Approximately 4.3 million tons per year of lignite would be mined for up to 40 years. As many as 12,275 acres would be disturbed over the life of the mine. Actual mining—the uncovering and extraction of lignite—would disturb between 135 and 340 acres per year. After the first 3 to 5 years of mining, approximately the same acreage would be reclaimed each year as that newly disturbed.

Construction of the power plant would begin in 2010 and continue for 3.5 years. During construction, an average of 500 workers would be on the site, with approximately 1,150 workers required during the peak construction period. The plant's operational workforce would be approximately 90–105 employees.

Proposed Actions

DOE's proposed actions are to provide financial assistance and to issue a loan

guarantee. The Congress established the CCPI program to accelerate commercial deployment of advanced technologies for generating clean, reliable, and affordable electricity in the United States using abundant domestic reserves of coal. EPAct established the Federal Loan Guarantee Program to assist energy projects that employ innovative technologies.

DOE proposed providing an additional $270 million in financial assistance to the Kemper County project. It has already provided some funding ($23.5 million) to Southern Company Services for the preliminary design and definition of this project at a previous location. DOE's proposed action encompasses those activities that are eligible for this funding, including the construction of power plant components such as the gasification island, the combined-cycle power generation unit, and its auxiliary facilities.

In addition to providing financial assistance, DOE is considering issuing a loan guarantee. A separate ROD would be issued regarding the loan guarantee. If approved for a guarantee, a loan from the Federal Financing Bank would fund a portion of the plant's construction costs.

Alternatives

Congress directed DOE to pursue the goals of the CCPI Program by means of partial funding of projects owned and controlled by non-Federal sponsors. This statutory requirement places DOE in a much more limited role than if it were the owner and operator of the project. Here, the purpose of and need for DOE action is defined by the CCPI program (and enabling legislation, Public Law 107–63) and the Federal Loan Guarantee Program (and enabling legislation, EPAct). Given these programmatic purposes and needs, reasonable alternatives available to DOE prior to the selection of this project under the CCPI and Loan Guarantee Programs were other projects that applied to these programs and met their eligibility requirements. Other applications (and their potential environmental, safety and health impacts) were considered during the evaluation and selection process. Pursuant to 10 CFR 1021.216, a synopsis of the environmental review and critique completed for the evaluation and selection process will be posted on the DOE NETL Web site at *http://www.netl.doe.gov/technologies/coalpower/cctc/ccpi/bibliography/demonstration/adv-gen/ccpi_285-mw.html.* Once the selection process complete, the reasonable alternatives are limited to alternatives still under consideration by the proponents of a selected project and the no-action alternative.

The site for the Kemper County project was chosen by Mississippi Power based on a site selection process it had completed prior to seeking DOE funding for the project. It found that the only reasonable site was the Kemper County site based on the location of accessible lignite reserves near Mississippi Power's service territory, proximity to infrastructure, topography, environmental considerations, and available open space.

With regard to alternative power generation technologies, DOE considered other coal-based technologies in evaluating the proposals received under the CCPI solicitation. Other technologies (*e.g.,* natural gas, wind power, solar energy, and conservation) would not achieve the CCPI program's goal of accelerating commercial deployment of advanced coal-based technologies. Other alternatives, such as reducing the size of the proposed project, were dismissed as unreasonable, since the size of the proposed project is related to Mississippi Power's projected need for power.

Under the proposed action alternative, DOE assessed the impacts of alternative water sources, alternative linear facility routes, and alternative levels of CO_2 capture. Route selection procedures were applied to all proposed linear facilities. These procedures considered various route selection factors, such as making use of (or paralleling) existing rights-of-way and avoiding developed or sensitive areas.

The EIS evaluated a range of alternative levels of percentage CO_2 capture: 25, 50, 67, and greater than 67. After initially basing the design on 25-percent capture, designs were updated to target 50- and then 67-percent capture. The project DOE has decided to fund includes a capture rate of 67 percent. This higher rate will require more fuel to achieve the same net power output relative to a plant with 50-percent capture. Air quality impacts vary slightly between the 50- and 67-percent rates and some other differences would result (*e.g.,* there would be small variations in outputs of by-products).

No-Action Alternative

Under the no-action alternative, DOE would not provide cost-shared funding for the design, construction, and demonstration of the proposed Kemper County IGCC Project, nor issue a loan guarantee. DOE considered the no-action alternative to be the same as the "no-build" alternative. However, without DOE participation, Southern Company and Mississippi Power could pursue two options. First, Mississippi Power could continue with the project without Federal participation. DOE believes that option is unlikely, because the financial risks and costs of deploying a new type of IGCC power system are significant. In any event, if the proponents were to proceed with the project without DOE participation, the direct, indirect, and cumulative impacts would be essentially the same as DOE's proposed action. Second, the proponents could abandon the IGCC project and, instead, meet future energy and capacity needs from other sources. Under this scenario, the proposed IGCC facility would not be built. It is also likely that the lignite mine would not be built nor the linear facilities. As a consequence, none of the direct impacts associated with the project would occur, whether adverse or beneficial. In addition, the opportunities for more rapid commercialization of the gasification technologies (alone or integrated with the combined-cycle facilities) would diminish, because utilities and industries tend to prefer known and demonstrated technologies. This outcome would not achieve the CCPI program's goal of accelerating commercial deployment of advanced coal-based technologies that can generate clean, reliable, and affordable electricity in the United States.

Potential Environmental Impacts and Mitigation Measures

In making its decision, DOE considered the environmental impacts of the proposed action and the no-action alternative on potentially affected environmental resource areas. These include: Air quality; greenhouse gas emissions; geology and soils; surface waters; ground water; terrestrial ecology; aquatic ecology; floodplains; wetlands; land use; socioeconomics; environmental justice; transportation; waste management; recreation; aesthetics and visual resources; cultural and historic resources; noise; and human health and safety. The EIS also considered the impacts from these facilities combined with those from other past, present and reasonably foreseeable future actions (*i.e.,* cumulative impacts). The following sections discuss the potential impacts in these areas.

Air Quality

Construction of the power plant would generate fugitive dust, engine emissions, and other emissions that would result in localized air quality

impacts. Projected emissions from power plant operations are up to 590 tons per year (tpy) SO_2, 1,900 tpy NO_X, 470 tpy particulate matter less than or equal to 10 micrometers in aerodynamic diameter (PM_{10}), 980 tpy carbon monoxide (CO), and lesser amounts of other pollutants. These emissions would potentially contribute to an increase in pollutant concentrations ranging from approximately 3 to 15 percent of the National Ambient Air Quality Standards (NAAQS) and from 12 to 71 percent of Prevention of Significant Deterioration (PSD) Class II increments. Plant emissions would have insignificant impacts on the closest PSD Class I area, which is 225 km (140 miles) away. For estimation of ambient impacts, all PM_{10} from combustion sources was assumed to be less than 2.5 micrometers (*i.e.,* $PM_{2.5}$). The power plant would also emit an estimated 1.8 to 2.6 million tpy of CO_2 annually, as well as small amounts of other pollutants (*e.g.,* 55 tpy of sulfuric acid mist and less than 0.1 tpy of mercury). In addition to CO_2, much smaller emissions of other GHGs (*e.g.,* nitrous oxide and methane) would be emitted from the IGCC plant and mine.

Construction and operation of the lignite mine would generate fugitive dust emissions from areas cleared to facilitate mining; fugitive dust emissions from clearing, mining, and grading an average of 275 acres per year for as many as 40 years; fugitive dust emissions from off-road trucks and other vehicles traveling on internal, unpaved roads; point source emissions of particulate matter from transfer points at the lignite handling facilities; and criteria and hazardous air pollutant emissions from combustion of gasoline and diesel fuel in construction and operating equipment. These emissions would have localized impacts.

During construction, use of modern, well-maintained machinery and vehicles meeting applicable emission performance standards would minimize emissions. Use of dust abatement techniques such as wetting soils, covering storage piles, and limiting operations during windy periods on unpaved, unvegetated surfaces would reduce airborne dust and resulting impacts. The distances of most construction-related activities from the nearest property boundary and residences would mitigate most potential impacts. EPA recommended, and DOE requires as a condition of its decision to provide financial assistance, measures to minimize diesel exhaust emissions from construction and operating equipment. These measures include using low-sulfur diesel fuel, properly equipping and maintaining diesel-fueled equipment, properly training operators, and employing safe work practices.

Greenhouse Gas Emissions

Mississippi Power will design the IGCC facility to capture approximately 67 percent of the CO_2 that would otherwise be emitted. The captured CO_2 will be sent by pipeline for use in EOR. The project, operating at an 85-percent capacity factor (*i.e.,* at full capacity), will emit approximately 1.8 million tpy of CO_2 while burning lignite coal and firing natural gas in the duct burners. It will also emit small amounts (approximately 91,000 tpy of CO_2 equivalents) of other GHGs.

Based on a study of life cycle GHG emissions from IGCC power systems DOE estimates that plant support operations, maintenance, and lignite mining could increase annual GHG emissions attributable to the operation of the generating station by approximately 130,000 tons (for a total of approximately 2.0 to 2.8 million tons annually). Total emissions of GHGs from construction activities will be approximately 430,000 tons of CO_2 equivalents (approximately 15 to 22 percent of 1 year's operating emissions). During its initial 6 months of operation, the plant may use coal delivered by truck from the Red Hills Mine. These temporary deliveries may result in an additional 4,400 tons of CO_2 emissions.

Most of the GHG emissions from coal-mining operations will result from combustion of diesel fuel in mining equipment and off-road vehicles. The annual emissions of CO_2 from mining operations were estimated at approximately 45,000 tons. These emissions represent less than 2 percent of the annual project's emissions. DOE requires as a condition of its decision that the plant be designed and built to achieve 67 percent carbon capture and that the project proponents use best efforts to achieve 67 percent carbon capture during the demonstration period.

Surface Waters

No new process wastewater discharges are anticipated from the power plant. The plant will use reclaimed effluent from two publicly owned treatment works in Meridian, Mississippi, which will reduce flows in Sowashee Creek but also remove a source of pollutants that contribute to the creek's impaired status. As many as 32 miles of perennial stream channels and 24 miles of intermittent stream channels will be removed temporarily by construction and lignite extraction at the adjacent mine. The USACE maintains the avoidance, minimization and mitigation process in accordance with Section 404 of the CWA which includes the permit application evaluation process. This process includes implementation of the USACE stream evaluation process including an adverse impact analysis. If authorized by the USACE and upon completion of all mining and reclamation, the existing drainage patterns will be restored. The USACE will determine through its minimization evaluation process the number and length of streams, if any, to be mined and diverted. Aquatic communities in streams in Kemper County not physically disturbed by the mining operations would not be adversely affected based on the data collected at the Red Hills Mine. The water budget of Okatibbee Lake would not change significantly, meaning that the total volume of water flowing through the lake should remain within its historical range. The use of sedimentation ponds for water quality treatment will result in decreased peak flows following storm events. Water quality standards are not expected to be exceeded due to mine discharges.

DOE requires, as a condition of its decision, that upstream and downstream water quality monitoring be conducted at appropriate locations in the mine area and in Okatibbee Lake to assess actual impacts. The monitoring parameters and details will be described in the MAP. In addition, DOE requires that the project proponents develop an adaptive environmental management plan in consultation with the USACE and MDEQ that establishes thresholds for implementing corrective measures in the event this monitoring detects adverse impacts. This plan would require the participants to mitigate adverse impacts to Okatibbee Lake and surrounding environments.

Ground Water

The power plant would use up to 1 million gallons per day (mgd) of saline ground water from the Massive Sand aquifer. No adverse impacts to other users of the Massive Sand or other aquifers are anticipated from the drawdown caused by this use, because predicted drawdowns at a distance of 0.5 mile from the supply well would be less than one foot for both peak short-term and average long-term use. Construction and operation of the lignite mine would require ongoing pit water control. These operations could cause drawdown in the shallow Middle Wilcox aquifer and could adversely impact some local ground water wells depending on site-specific drawdown experienced and the specific

circumstances of a given well (*e.g.,* well depth, pump setting, etc.). It is possible that the amount of drawdown at a given well could cause diminution of supply. If an existing supply becomes unusable, alternative supplies will be provided by the North American Coal Company, the mine operator, as required by the surface mining regulations. No adverse effects on the Lower Wilcox aquifer are expected.

Post-mining ground water quality in the reclaimed areas cannot be predicted with certainty. Based on experience at similar mines, ground water would likely have higher TDS than before mining. Therefore, development of future shallow freshwater wells in mine spoil deposits might not be feasible. However, sufficient fresh water would be available from the Lower Wilcox aquifer and public water systems during and after mining.

Terrestrial Ecology

As many as 1,085 acres of terrestrial ecological resources would be altered on the power plant site by construction of the plant and some mine-related facilities. Of this, approximately 419 acres are currently in agricultural production, mostly in pine plantations, pasture, and hay fields. Most wildlife located within the construction area would relocate to suitable onsite or adjacent habitats; small, less mobile or burrowing animals might be lost. No federally listed plants or animals were observed on the site, nor are any known to occur there, although records exist for a few listed species in the surrounding region. Two State listed species, the sharp-shinned hawk and the barred owl, were observed on the sites of the power plant, mine or both, but adverse effects are not expected due to these birds' mobility and the abundance of suitable habitat in the area. Construction and operation of the facilities on the power plant site are not expected to adversely affect either listed or migratory species.

Mine site preparation and construction activities will result in sequential vegetation removal from most of the construction areas. Approximately 1,455 acres will be affected during the initial construction phase. Thereafter, existing terrestrial habitat will be cleared and reclaimed at an average rate of 275 acres per year. After mining, mine pits will be reclaimed and revegetated. As with the power plant site, mobile wildlife would likely relocate to adjacent, non-impacted, or restored portions of the mine study area or to suitable offsite habitats. After reclamation, various wildlife species could return to reclaimed lands relatively quickly. Individuals of less mobile or burrowing species could be lost. No federally listed plants were observed in the mine study area, although Price's potato bean may occur in the region. It is unlikely that regional populations of listed or migratory species will be adversely affected by mining.

The primary impact to terrestrial resources from linear facility construction or upgrades will result from vegetation clearing; smaller temporary impacts will occur due to pipeline trenching. Construction of the linear facilities is not expected to adversely affect any endangered or threatened plant or wildlife populations, including migratory birds.

With site clearing activities, there is the potential for introduction of invasive species. DOE requires as a condition of its decision that monitoring be conducted to determine whether invasive, exotic, or nuisance species occurrences are increasing as a result of project activities. If such occurrences are increasing as a result of the project, control and management steps will be required as specified in a Mitigation Action Plan (see "Mitigation").

Aquatic Ecology

The power plant is expected to have direct impact on only one surface water body. The diversion of effluent to the power plant currently being discharged from two publicly owned treatment works (POTWs) in Meridian to Sowashee Creek would reduce flows in the creek. But it would also remove a source of pollutants to the creek. Biological communities downstream of POTWs are commonly suppressed or altered due to water quality changes. A reduction of effluent discharge may mitigate the impacts of these changes on the aquatic communities.

The lignite mine will displace aquatic habitat during active mining until habitat reclamation is completed. Diversion canals will temporarily replace the displaced aquatic habitat and provide habitat similar to existing streams and support similar biological communities.

DOE requires, as a condition of its decision, that fish and macroinvertebrate sampling, as specified in the MAP, is conducted using appropriate EPA- or Mississippi Department of Environmental Quality (MDEQ)-approved bioassessment protocols to determine whether adverse effects on the aquatic ecosystem are resulting from the project. If significant adverse effects are detected, additional mitigation will be implemented to minimize these effects, as specified in the MAP (see "Mitigation").

Floodplain Statement of Findings

In accordance with 10 CFR part 1022 (DOE regulations on Compliance with Floodplain and Wetland Environmental Review Requirements), DOE considered the potential impacts of the proposed project and its connected actions on floodplains. The portion of the IGCC site that will be used for permanent facilities is wholly located above the base and critical action floodplain. Construction and operation of the plant are expected to have no direct or indirect effect on floodplains. For the construction of linear facilities associated with the power plant, direct impacts to floodplains will result from clearing vegetation, particularly shrubs and trees, from the floodplain areas and stream banks.

Also, depending upon final designs, electrical transmission tower supports could be constructed within the base floodplains and construction of the reclaimed effluent, natural gas, and CO_2 pipelines may cause temporary direct impacts to the streams that are crossed. DOE has found no practicable alternative to locating these linear facilities in floodplain areas. It requires, as a condition of its decision, that floodplain impacts be minimized through construction methods and timing to the extent practicable.

In addition to the potential floodplain impacts of the linear facilities, the connected action of developing the lignite mine will divert the flow in the Chickasawhay Creek during the initial years of mining within Mine Block A, which will disconnect the existing floodplain from the flow channel. Total storm-event runoff volumes could increase by up to 637 acre-feet (ac-ft). Okatibbee Lake, a multipurpose reservoir operated by the USACE and located approximately 5 miles downstream, has a summer flood storage capacity of 42,590 ac-ft and a winter flood storage capacity of 59,490 ac-ft. The projected increase of 637 ac-ft would be less than 1.2 percent of the winter flood storage capacity; also, peak flow rates are projected to decrease, minimizing the effect of the potential volume increase. Between 2038 and 2055—well after DOE's involvement—the mine developer may construct levees that could further affect floodplains. Conditions for avoidance, minimization, and mitigation during the period after DOE's involvement would be established by the USACE and MDEQ. During the preparation of the Final EIS and as a result of pre-application consultations with the USACE, the North American Coal Company responded to DOE and

USACE comments by revising the mine development plan. Four separate mine plans were analyzed and the alternative finally selected should minimize potential wetland and floodplain impacts compared to the other practicable mine plans. However, this avoidance and minimization would result in approximately 10.0 million tons of lignite remaining in the ground. Also, long-term operational costs would increase as a result of having to mine lignite from higher ratio (overburden to lignite) reserves with less favorable recovery economics. DOE has found no practicable alternative to mine development that would further avoid or minimize impacts to floodplains.

Wetlands

There could be impacts to as many as 2,971 acres of wetlands if the USACE authorizes the activities that would affect wetlands: 104 acres for power plant facilities on the power plant site; 25 acres for mine facilities on the power plant site; 2,375 acres in proposed mining blocks; and 467 acres within the linear facility corridors. The linear facility impacts would most likely be temporary, as they would result from construction or other short-term conversions of habitat. The remaining impacts may be permanent.

Approximately 129 acres of wetlands and streams could be lost or altered by construction activities associated with the power plant and mining facilities located on the power plant site. All of these impacts could be permanent. If authorized by the USACE, impacts will require mitigation in accordance with the Clean Water Act (CWA) under Section 404 permit requirements such that existing functional values of impacted wetlands are replaced.

Adverse impacts to as many as 2,375 acres of wetlands that lie within the anticipated life-of-mine area are expected over the 40-year life-of-mine. Any wetland impacts will require CWA Section 404 permit authorization, which could require onsite mitigation (both on reclaimed mined lands and in adjoining upland areas not disturbed by mining), offsite mitigation, or a combination of both. Based on mitigation at other mine sites in the region, wetland functions would, after reclamation, be expected to return over time, as natural revegetation (or planting) and succession occur and wetland hydrology is restored. Long-term monitoring of this process is required by both the USACE and MDEQ.

Within the linear facilities corridors, wetlands will be impacted primarily by conversion (partial clearing) of forested and some shrub-dominated wetlands for construction of linear facilities. As many as 400 acres of wetlands and 67 acres of other waters (streams, ditches, and ponds) could potentially be impacted by linear facilities construction. Most impacts will be conversion of forested and possibly shrub-dominated wetlands to shrub- and herbaceous-dominated wetland systems and all impacts would most likely be temporary. DOE has found no practicable alternative to these impacts on wetlands and it requires as a condition of its decision that any wetland impacts be avoided until the USACE finalizes its permit application evaluation process in accordance with Section 404 of the CWA. If a permit is authorized by the USACE, mitigation plans must be consistent with 33 CFR part 332, Compensatory Mitigation for Losses of Aquatic Resources. The USACE will determine the specifics of the mitigation requirements during the Department of the Army permit application evaluation process in accordance with 33 CFR 325.

Socioeconomics and Environmental Justice

Project development is expected to result in positive direct and indirect effects through *ad valorem* taxes, sales tax proceeds from employee spending, and sales tax proceeds for purchases of equipment and services. Beyond the estimated combined construction payroll for the plant and mine of $145 million, there is an estimated additional indirect benefit of $82 million and 186 additional jobs due to construction activities. The corresponding numbers for the operation of the plant and mine are an estimated $25 million combined annual payroll, an indirect annual benefit of about $11.4 million, and approximately 97 additional jobs. Project development may impact housing availability during construction, but sufficient housing is likely to be available.

The power plant and mine are located in census tracts that have a higher percentage of minorities and a higher percentage of population below the poverty level than other census tracts within a 7-mile radius around the plant and in the State as a whole. Therefore, DOE has concluded that an environmental justice population exists, and has examined the potential for "disproportionately high and adverse" health or environmental effects consistent with Executive Order 12898. The potential effects analyzed included health impacts from air emissions and accidental releases, displacement of landowners due to the development of the mine, effects on ground water wells, transportation impacts, housing availability, aesthetics, and noise levels in sensitive areas. Based on an analysis of these potential effects, DOE has determined that construction and operation of the facilities are not likely to result in disproportionately high and adverse impacts and burdens on an environmental justice community.

Transportation

The area roadways connecting to the existing population centers are adequate to accommodate the anticipated traffic during construction and operation. Local roads in proximity to the power plant will experience impact in the form of degraded level of service during both construction and operation. Heavy haul routes in proximity to the plant will require evaluation for weight and other limitations. The initial coal hauling route from the Red Hills Mine to the plant site may experience as many as 80 trucks per day spread over a 16-hour day for a period of approximately six months. There will be an increase in traffic on area roadways resulting in a potential increase in accidents and injuries. The increase in truck traffic during the operations involving transport of lignite from the Red Hills Mine would be especially severe. DOE requires, as a condition of its decision, mitigation to minimize these impacts as described in the MAP.

Cultural and Historic Resources

Construction of the proposed power plant could impact one onsite historic resource (a house dating from approximately 1900). Mining could impact cultural resources which have yet to be evaluated in terms of value. Mining of future mine blocks and construction of linear facilities would likely impact several sites that have been assessed as potentially eligible for listing. Cultural resources will be avoided to the extent practicable when siting facilities. Evaluation and appropriate resource recovery will be guided by the terms of a project-specific programmatic agreement, which has been developed to satisfy Section 106 of the National Historic Preservation Act. The agreement has been signed by DOE, the USACE, the Mississippi Department of Archives and History, MDEQ, the Mississippi Band of Choctaw Indians, the Choctaw Nation of Oklahoma, Mississippi Power Company, North American Coal Company, and Southern Company Services. The programmatic agreement is a condition of DOE's decision to provide financial assistance.

Noise

Power plant construction noise would be temporary but noticeable at several

nearby residences. With one exception, the highest levels experienced by residents would be no louder than maximum levels from passing vehicular traffic. Steam blows that will be necessary over several days near the end of plant construction could potentially reach levels of annoyance to persons outdoors at the closest residences. DOE requires as a condition of its decision that Mississippi Power Company notify affected residents prior to the steam blow operation.

Noise associated with power plant operation is expected to result in an impact of 57 A-weighted decibels (dBA) at one adjacent residence, exceeding the U.S. Environmental Protection Agency residential guideline of 55 dBA but less than the Department of Housing and Urban Development residential guideline of 65 dBA. Mississippi Power is pursuing acquisition of most of the residential properties near the plant site, including the property where the highest noise impacts have been predicted. Mining would also result in localized noise impacts, primarily in the area surrounding the active mine block. An appropriate level of sound control will be designed into facility equipment to limit operational noise levels. In addition, DOE requires as a condition of its decision that noise from the loudest pieces of equipment be reasonably controlled to mitigate impacts as specified in the MAP.

Human Health and Safety

Construction of all of the facilities poses hazards typical of any large industrial construction project. Health and safety risks will accompany the construction efforts and could affect local residents as well as construction workers. Some injuries to construction workers are likely, as indicated by industry statistics. Operations of the project facilities entail risks as well, given the nature of the facilities and based on industry statistics.

The IGCC power plant would emit a maximum of 18.5 tpy of hazardous air pollutants (HAPs). Modeling studies found that these HAPs should not result in or contribute significantly to inhalation health risks. The total cancer risk was predicted to be less than one in a million (the level below which exposures are generally considered to be acceptable). The noncancer risks are estimated to be below levels considered to have adverse health effects. Similarly, health risks from mercury emitted from the IGCC stacks are expected to be below levels of concern. DOE requires as a condition of its decision that the project proponents characterize IGCC stack emissions of HAPs as specified in the MAP.

The emissions of criteria pollutants could affect the overall mortality and morbidity of the surrounding population. The possible effects were estimated at less than one additional death per year and the lost days of life per person were predicted to be much less than one. The annual increase in hospital admissions, incidence of adult bronchitis, asthma hospital admissions, and asthma emergency room visits were all predicted to be less than one per year. The average annual number of asthma attacks among asthmatics, work loss days, and restricted activity days for the entire population were conservatively predicted to increase by 26, 56, and 298 occurrences, respectively.

Additional health and safety risks could result from the handling, storage, and transport of hazardous materials, including ammonia and CO_2, due to an accidental release or intentional act of sabotage or terrorism. A catastrophic rupture of an ammonia storage tank or tanker truck could potentially cause severe health effects up to 1.7 and 1.2 miles from the accident, respectively. A complete rupture of the CO_2 pipeline would potentially result in adverse health effects to exposed persons within 0.7 mile of the accident. Population levels along the pipeline corridor are low, and given the limited extent of the affected area, it is unlikely that an accident would result in injuries. All of these results were based on the most severe reasonably foreseeable scenarios.

Potential Environmental Impacts of the No-Action Alternative

Under the no-action alternative, DOE assumed there would be no development at the site, since there are no other reasonably foreseeable plans for development. Therefore, the impacts under the no-action alternative (*i.e.,* no development) were evaluated in the EIS and compared to the proposed action. There would be no new sources of air emissions affecting air quality; there would be no changes in existing hydrologic conditions and no alterations of stream flow, path, and water quality; existing impaired habitats and low diversity aquatic communities would remain; and there would be no alteration or loss of existing floodplains, floodplain storage, or flood conveyance capacity. There would be no change in existing socioeconomic conditions, no potential for economic stimulus from proposed project, and no change in existing conditions relative to community services; no change in existing conditions relative to environmental justice populations and no potential for adverse impacts or economic benefits from the proposed project. There would be no change in existing vehicular traffic and level of service conditions would remain the same; potentially affected cultural resources would remain in place and not be recovered; no new sources of noise would be built and operated; and there would be no added health and safety risks. Increased emissions of greenhouse gases would likely still occur, but these increases would depend on the technology that would be used to generate the power that would have been provided by the project.

Environmentally Preferred Alternative

The no-action alternative is environmentally preferable because it would result in no change to the existing environmental conditions.

Comments Received on the Final EIS

DOE received comments on the Final EIS from two Federal agencies: EPA's Region 4 (EPA) and the Department of the Interior (DOI). DOE did not receive any other comments on the Final EIS. EPA's comments supported selection of the IGCC technology but noted there are environmental concerns inherent to any power plant and mining operations. The specific concerns in EPA's comments involved air quality impacts, climate change issues, impacts to waters of the United States, bioaccumulation of mercury, effluent discharges, impacts to drinking water supplies, effects on housing availability and cost for environmental justice populations, and mitigation of the effects of increased traffic. DOI's comments focused on impacts to aquatic resources.

EPA's comments on air quality impacts were related to the new 1-hour National Ambient Air Quality Standards (NAAQSs) for NO_2 (100 parts per billion, or ppb) and SO_2 (75 ppb). Due to the timing of the issuance of these new standards and of the Final EIS, it was not possible to address these new standards in the EIS. The conclusion in the Final EIS that NAAQSs would not be exceeded was based on modeling done for MDEQ's air permitting process, a process that was completed before the new NO_2 standard became effective on April 12, 2010.[1] The SO_2 standard will not become effective until August 23, 2010. In response to EPA's comment that information on the project's impacts as to these new standards should be provided, DOE conducted a

[1] The NO_2 standard is currently under judicial review. *See American Petroleum Inst.* v. *EPA,* No. 10–1079 (D.C. Cir. Apr. 13, 2010).

conservative screening-level analysis and found that the project would have a maximum impact of 41 ppb (1-hour average) of NO_2 and 36 ppb (1-hour average) of SO_2. These new standards for NO_2 and SO_2 are likely to result in revisions to Mississippi's State Implementation Plan under the Clean Air Act. The State would assess air quality levels within the State and identify any areas that fail to comply with these standards. Mississippi would need to design and implement control strategies for these "nonattainment areas" that would bring them into compliance with the new NAAQSs for NO_2 and SO_2. This statutory process for State implementation of new NAAQSs would include any monitoring or more refined modeling that MDEQ determines is needed to ensure compliance with these standards.

As to climate change issues, EPA questioned the use of 0.3 to 2.1 metric tons of carbon per acre per year for estimating lost sequestration potential and suggested using a value of 1.1 to 7.7 tons of carbon dioxide. In fact, 2.1 metric tons of carbon per year is equivalent to 7.7 tons of carbon dioxide per year.[2] EPA also requested a reference for the 1 metric ton sequestration potential difference between forest and grassland. That figure was obtained from "Greenhouse Gas Mitigation Potential in U.S. Forestry and Agriculture" (EPA 430–R–05–006).

EPA expressed concern about impacts to waters of the United States, in particular impacts to perennial streams, adjacent wetlands, and their buffers that have the potential to negatively impact Okatibbee Lake. DOE agrees that, to the extent practicable, "avoidance and minimization of impacts should be fully realized" in the permitting process under Section 404 of the Clean Water Act and the regulations that implement it (40 CFR part 230). However, complete avoidance, as suggested in EPA's comment, of all such impacts may not be practicable. Monitoring of the mine's downstream water quality and volume effects on the lake, as recommended by EPA, as well as development of an adaptive management plan in consultation with the USACE, are conditions of DOE's decision and will be included in the MAP. EPA also expressed its views on Section 404 permit conditions (*e.g.* conditioning subsequent permits on the success of mitigation, appropriate use of site protection instruments, use of mitigation banks or establishment of a single user bank, and compliance with the USACE and EPA Mitigation Rule).

However, these concerns are more appropriately addressed to the USACE, the agency responsible for implementing Section 404 of the Clean Water Act, rather than to DOE. With regard to bioaccumulation of mercury, EPA appreciated DOE's responses to its comments on the Draft EIS and recommended that DOE coordinate with MDEQ on updated fish tissue sampling data. DOE concluded in the Final EIS that the incremental contribution to health hazards associated with mercury uptake from the project was small compared to ambient conditions. As requested by EPA, DOE consulted with MDEQ and has determined that, although more recent laboratory data have been collected by MDEQ, no additional analysis is necessary to support DOE's conclusion.

EPA also stated that impacts of the project should be monitored as the project progresses, specifically noting that effluent discharges will be regulated under the National Pollutant Discharge Elimination System and the MDEQ Surface Mine Control and Reclamation Act permit. DOE requires as a condition of its decision that the project comply with all permit requirements, including monitoring requirements. Also, with respect to monitoring, EPA recommended that monitoring of impacts to drinking water sources be conducted and that DOE's ROD include measures to ensure the quality of drinking water supplies. DOE requires the participants to conduct such monitoring and mitigation as a condition of its decision. The required measures will be described in the MAP.

With regard to environmental justice, EPA requested that the potential impacts on housing and transportation be acknowledged and that potential mitigation measures (*i.e.* housing or rental assistance) be identified in the ROD. DOE's analysis of potential impacts to environmental justice populations concluded that there would not be disproportionately high and adverse impacts. However, DOE acknowledges that there is always the possibility of unanticipated or unforeseeable impacts. Therefore, DOE requires as a condition of its decision that housing availability be monitored and information on its availability, cost, utility costs, and potential sources of assistance be provided as described in Mississippi Power's Kemper County Community Plan. EPA commended this Community Plan and encouraged Mississippi Power to continue to provide opportunities for community engagement and to pursue a strategy of employment and training opportunities for the local population. DOE agrees and also encourages Mississippi Power to continue and expand its community outreach activities.

Regarding transportation impacts, EPA recommended that DOE consult with the Mississippi Department of Transportation and the Federal Highway Administration on the development of mitigation measures. DOE has contacted both agencies and has identified mitigation measures that it will include in the Mitigation Action Plan.

DOI expressed its views on the impacts to aquatic resources from the power plant and mine, noting that there are two separate Section 404 permit applications before the USACE. DOI stated that, for the power plant, impacts to wetlands and streams have been minimized and adequate compensatory mitigation has been proposed. DOI also restated its determination in a letter dated January 14, 2010, to the USACE that the lignite mine would have substantial and unacceptable impacts on aquatic resources of national importance and recommended that all lost wetland functions and values be mitigated at a suitable offsite area within the watershed. DOE recognizes that DOI considers the current mitigation plan proposed by the North American Coal Company for the mine to be inadequate. DOE expects that additional avoidance and minimization, as well as appropriate mitigation consistent with the applicable Mitigation Rule, will be developed through USACE's Section 404 permit application evaluation process, in consultation with the U.S. Fish and Wildlife Service, EPA and MDEQ. Compliance with the requirements of the Section 404 permit (if authorized), as well as all other applicable permits, is a condition of DOE's decision.

Issued in Washington, DC, on this 12th day of August 2010.

James J. Markowsky,

Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2010–20565 Filed 8–18–10; 8:45 am]

BILLING CODE 6450–01–P

[2] One converts tons of carbon to tons of carbon dioxide using the ratio of the molecular weights of the two substances (44/12).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: P–2149–152]

Public Utility District No. 1 of Douglas County (Douglas PUD); Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 10, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2149–152.

c. *Date filed:* May 27, 2010.

d. *Applicant:* Public Utility District No. 1 of Douglas County (Douglas PUD).

e. *Name of Project:* Wells Hydroelectric Project.

f. *Location:* The existing project is located on the Columbia River in Douglas, Okanogan, and Chelan Counties, Washington. The project currently occupies 15.15 acres of Federal land managed by the U.S. Department of the Interior and the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Shane Bickford, Natural Resources Supervisor, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802–4497; (509) 881–2208.

i. *FERC Contact:* Kim A. Nguyen (202) 502–6105 or *kim.nguyen@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Wells Hydroelectric Project consists of a single development with an installed capacity of 774,300 kilowatts. Average annual generation of the project is 4,364,959 megawatt-hours. In addition to providing electric service to over 18,000 customers in Douglas County, power from the Wells Project is used to meet both daily and seasonal peaks in power demand in the Pacific Northwest region and contributes to the reliability and stability of the regional electric system.

The Wells Project consists of: (1) A 1,130-foot-long, 168-foot-wide concrete hydrocombine dam with integrated generating units, spillways, switchyard and fish passage facilities; (2) a 2,300-foot-long, 40-foot-high earth and rock-filled west embankment; (3) a 1,030-foot-long, 160-foot-high earth and rock-filled east embankment; (4) eleven 46-foot-wide, 65-foot-high ogee-designed spillway bays with 2 vertical lift gates (upper leaf is 46 feet by 30 feet and lower leaf is 46 feet by 35 feet); (5) five spillways modified to accommodate the juvenile fish bypass system; (6) 10 generating units each housed in a 95-foot-wide, 172-foot-long concrete structure with an installed capacity of 774.3 megawatts (MW) and maximum capacity of 840 MW; (7) five 14.4-kilovolts (kV) power transformers each connected to 2 generating units converting the power to 230 kV; (8) two 41-miles-long, 230-kV single-circuit transmission lines running parallel to each other; and (9) appurtenant facilities. The Wells Project is operated as a run-of-river facility with daily outflows to the Wells Reservoir equaling daily inflows.

Douglas PUD is not proposing any changes to project operations or the project boundary for the Wells Project. New facilities proposed by Douglas PUD include new interpretive displays, new facilities and infrastructure at the Wells and Methow fish hatcheries, new recreation facilities, and participation in a white sturgeon hatchery and rearing facility.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues Draft EA.	April 2011.
Commission issues Final EA.	October 2011.

p. Final amendments to the application must be filed with the

Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–20502 Filed 8–18–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2790–055]

Boott Hydropower, Inc.; Eldred L Field Hydroelectric Facility Trust; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 10, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2790–055.

c. *Date Filed:* July 6, 2010.

d. *Applicant:* Boott Hydropower, Inc. and Eldred L Field Hydroelectric Facility Trust.

e. *Name of Project:* Lowell Hydroelectric Project.

f. *Location:* The project is located on the Merrimack River in Middlesex County, Massachusetts.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. Applicant Contact: Kevin Webb, Vice Regulatory Affairs Coordinator, Boott Hydropower, Inc., One Tech Drive, Suite 220, Andover, MA 01810. Tel: (978) 681–1900 Ext 809.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov*.

j. *Deadline for filing comments and or motions:* September 10, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system (*http://www.ferc.gov/docs-filing/ecomment.asp)* and must include name and contact information at the end of comments. The Commission strongly encourages electronic filings.

All documents (original and seven copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2790–055) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensees request authorization to replace the existing 5-foot-high wooden flashboard system on the Pawtucket Dam with an identical height pneumatic crest gate system. The licensed normal pool elevation of 92.2 feet msl (NGVD 1929) will not change. Additionally, during the interim period of approval of the amendment request and completion of construction of the pneumatic crest gate system, the licensees request a temporary modification to the height of the existing wooden flashboard's support pins from 5 feet exposed to 4.5 feet exposed; the top of the wooden flashboards will be six inches higher than the top of the support pins.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site using the "eLibrary" link at *http://elibrary.ferc.gov/idmws/search/fercgensearch.asp* . Enter the docket number excluding the last three digits (P–2790) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–20503 Filed 8–18–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 11, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1403–001.

Applicants: Stephentown Regulation Services LLC.

Description: Stephentown Regulation Services LLC submits redlined and clean versions of their market-based rate tariff.

Filed Date: 08/10/2010.

Accession Number: 20100811–0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2189–000.

Applicants: NASDAQ OMX Commodities Clearing-Delivery, LLC.

Description: NASDAQ OMX Commodities Clearing-Delivery LLC submits tariff filing per 35.12: Market-

Based Rate Tariff in Compliance with Order No. 714 to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5100.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2190–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35.12: FPL Tariff No. 1 Baseline Filing to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5115.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2191–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–08–10 ISO Request for Tariff Waiver re Request Window for Economic Projects.

Filed Date: 08/10/2010.

Accession Number: 20100810–5118.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2192–000.

Applicants: Constellation Energy Commodities Group Maine, LLC .

Description: Constellation Energy Commodities Group Maine, LLC submits tariff filing per 35.12: Constellation Energy Commodities Group Maine Baseline MBR Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5122.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2193–000.

Applicants: H.Q. Energy Services (U.S.) Inc.

Description: H.Q. Energy Services (U.S.) Inc. submits tariff filing per 35.12: HQUS Baseline to be effective 8/11/2010.

Filed Date: 08/11/2010.

Accession Number: 20100811–5057.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: ER10–2194–000.

Applicants: Luminant Energy Company LLC.

Description: Luminant Energy Company LLC submits tariff filing per 35.12: Luminant Energy Company LLC MBR Baseline to be effective 8/11/2010.

Filed Date: 08/11/2010.

Accession Number: 20100811–5060.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: ER10–2195–000.

Applicants: Driftwood, LLC.

Description: Driftwood LLC submits the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authorization, Rate Schedule FERC No. 1.

Filed Date: 08/11/2010.

Accession Number: 20100811–0203.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: ER10–2196–000.

Applicants: Lakewood Cogeneration Limited Partnership.

Description: Lakewood Cogeneration Limited Partnership submits tariff filing per 35.12: Lakewood Cogeneration Limited Partnership MBR Baseline to be effective 8/11/2010.

Filed Date: 08/11/2010.

Accession Number: 20100811–5062.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: ER10–2197–000.

Applicants: Northern States Power Company, a Wisconsin Corporation.

Description: Northern States Power Company, a Wisconsin Corporation submits tariff filing per 35: 20100811_Baseline Filing to be effective 8/11/2010.

Filed Date: 08/11/2010.

Accession Number: 20100811–5078.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–53–000.

Applicants: PATH Allegheny Transmission Company, LLC, PATH Allegheny Maryland Transmission Commission.

Description: PATH Allegheny Transmission Company, LLC, *et al.,* Amendment to Section 204 Application.

Filed Date: 08/10/2010.

Accession Number: 20100810–5102.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH10–17–000.

Applicants: Continental Energy Systems LLC.

Description: Notice of Material Change in Facts for FERC–65A Exemption and FERC–65B Waiver of Continental Energy Systems LLC.

Filed Date: 08/10/2010.

Accession Number: 20100810–5114.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD10–14–000.

Applicants: North American Electric Reliability Corporation.

Description: First Quarter 2010 Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 629 of Order No. 693.

Filed Date: 06/01/2010.

Accession Number: 20100601–5214.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 20, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–20506 Filed 8–18–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 10, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–1106–009; ER08–1255–004; ER10–566–002.

Applicants: ArcLight Energy Marketing, LLC, Oak Creek Wind Power, LLC, Coso Geothermal Power Holdings, LLC.

Description: Substitute List of Energy Affiliates on behalf of ArcLight Energy Marketing, LLC, Coso Geothermal Power Holdings, LLC, and Oak Creek Wind Power, LLC.

Filed Date: 07/01/2010.

Accession Number: 20100701–5189.

Comment Date: 5 p.m. Eastern Time on Friday, August 27, 2010.

Docket Numbers: ER10–1466–001.

Applicants: Community Power & Utility.

Description: Community Power & Utility submits amended petition for acceptance of Initial Tariff Waivers and Blanket Authority, *etc.*

Filed Date: 08/09/2010.

Accession Number: 20100809–0205.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: ER10–1705–001.

Applicants: Starion Energy NY, Inc.

Description: Starion Energy, Inc. submits Substitute Original Sheet 3 *et al.*

Filed Date: 08/02/2010.

Accession Number: 20100802–0221.

Comment Date: 5 p.m. Eastern Time on Monday, August 23, 2010.

Docket Numbers: ER10–1866–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator submits tariff filing per 35.17(b): NYISO Errata Filing—BPCG—Bluvas 08/10/10 to be effective 9/30/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5034.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 17, 2010.

Docket Numbers: ER10–1977–002.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator submits tariff filing per 35.17(b): NYISO Errata Filing IBRT—Bluvas 08/10/10 to be effective 9/30/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5042.

Comment Date: 5 p.m. Eastern Time on Friday, August 20, 2010.

Docket Numbers: ER10–2167–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits Notice of Cancellation of First Revised FERC Rate Schedule 290, the Electric Power Supply Agreement.

Filed Date: 08/09/2010.

Accession Number: 20100809–0204.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: ER10–2168–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Large Generator Interconnection Agreement for PG&E's Collinsville Wind Project, to be effective 10/9/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5002.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2169–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): LGIA First Solar SA 86 N 080910, to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5003.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2170–000.

Applicants: New England Power Company.

Description: New England Power Company submits tariff filing per 35.12: New England Power Company FERC Electric Tariff No. 10 (Market-Based Rates) to be effective 8/10/2010

Filed Date: 08/10/2010.

Accession Number: 20100810–5024.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2171–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation submits tariff filing per 35.12: FERC Electric Tariff No. 4 (Market-Based Rates), to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5025.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2172–000.

Applicants: Baltimore Gas and Electric Company.

Description: Baltimore Gas and Electric Company submits tariff filing per 35.12: Baltimore Gas and Electric Baseline MBR Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5027.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2173–000.

Applicants: Granite State Electric Company.

Description: Granite State Electric Company submits tariff filing per 35.12: Granite State Electric Company FERC Electric Tariff No. 1 (Market-Based Rates) to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5028.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2174–000.

Applicants: Constellation Power Source Generation, I.

Description: Constellation Power Source Generation, Inc. submits tariff filing per 35.12: CPSG Market-Based Rate Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5029.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2175–000.

Applicants: Massachusetts Electric Company.

Description: Massachusetts Electric Company submits tariff filing per 35.12: Massachusetts Electric Company FERC Electric Tariff No. 2 (Market-Based Rates) to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5030.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2176–000.

Applicants: Constellation Energy Commodities Group, Inc.

Description: Constellation Energy Commodities Group, Inc. submits tariff filing per 35.12: Constellation Energy

Commodities Group Baseline MBR Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5031.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2177–000.

Applicants: The Narragansett Electric Company.

Description: The Narragansett Electric Company submits tariff filing per 35.12: The Narragansett Electric Company FERC Electric Tariff No. 2 (Market-Based Rate) to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5032.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2178–000.

Applicants: Constellation NewEnergy, Inc.

Description: Constellation NewEnergy, Inc. submits tariff filing per 35.12: Constellation NewEnergy Baseline MBR Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5033.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2179–000.

Applicants: Calvert Cliffs Nuclear Power Plant, LLC.

Description: Calvert Cliffs Nuclear Power Plant, LLC submits tariff filing per 35.12, Market-Based Rate Tariff, to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5035.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2180–000.

Applicants: Handsome Lake Energy, LLC.

Description: Handsome Lake Energy, LLC submits its baseline tariff filing, FERC Electric Tariff pursuant to Order No. 714, to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5036.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2181–000.

Applicants: Nine Mile Point Nuclear Station, LLC.

Description: Nine Mile Point Nuclear Station, LLC submits tariff filing per 35.12: Nine Mile Point Nuclear Station Baseline MBR Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5037.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2182–000.

Applicants: R.E. Ginna Nuclear Power Plant, LLC.

Description: R.E. Ginna Nuclear Power Plant, LLC submits tariff filing per 35.12: R.E. Ginna Nuclear Power Plant Baseline MBR Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5038.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2183–000.

Applicants: CER Generation II, LLC.

Description: CER Generation II, LLC submits tariff filing per 35.12: CER Generation II Baseline MBR Filing to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5039.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2184–000.

Applicants: CER Generation, LLC.

Description: CER Generation, LLC submits tariff filing per 35.12: CER Generation Baseline MBR Tariff to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5040.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2185–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): RLA RRI Mandalay R 081010 to be effective 10/6/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5041.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2186–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Consolidated Edison Company of New York, Inc. submits tariff filing per 35.13(a)(2)(iii): Correction to Rate Schedule No. 96 to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5054.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2187–000.

Applicants: Spokane Energy, LLC.

Description: Spokane Energy, LLC submits tariff filing per 35.12: Spokane Energy eTariff Baseline to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5068.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: ER10–2188–000.

Applicants: Avista Turbine Power, Inc.

Description: Avista Turbine Power, Inc. submits its baseline tariff filing per Order No. 714, to be effective 8/10/2010.

Filed Date: 08/10/2010.

Accession Number: 20100810–5073.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF10–614–000.

Applicants: Sysco Raleigh, LLC.

Description: Self-Certification of EG by PowerSecure Inc. for Sysco Raleigh LLC.

Filed Date: 08/06/2010.

Accession Number: 20100806–5018.

Comment Date: Not Applicable.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–20505 Filed 8–18–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–015]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to GE From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–015) that grants to the General Electric Company (GE) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedure for certain basic models containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's decision and order, GE shall be required to test and rate its refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters using an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective August 19, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611, E-mail: *Michael.Raymond@ee.doe.gov.* Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 287–6111, E-mail: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants GE a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters, provided that GE tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits GE from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on August 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: The General Electric Company (Case No. RF–015).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." 42 U.S.C. 6291–6309. Part A of Title III includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3).

Today's notice involves residential electric refrigerator and refrigerator-freezer products covered under Part A. The test procedure for residential electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On December 19, 2006, GE filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. The products covered by the petition employ relative humidity sensors and adaptive control

anti-sweat heaters, which detect and respond to temperature and humidity conditions, and then activate adaptive heaters as needed to evaporate excess moisture. GE's petition was published in the **Federal Register** on April 17, 2007. 72 FR 19189. DOE granted the GE petition in a decision & order published on February 27, 2008. 73 FR 10425.

On February 16, 2010, GE informed DOE that it has developed additional basic models with adaptive anti-sweat heater technology. GE asserted that these new products function and operate the same way as the basic models listed in GE's December 2006 petition for waiver with respect to the properties that made those products eligible for a waiver. GE requested that DOE grant a new waiver for these additional basic models. GE's petition was published in the **Federal Register** on April 29, 2010. 75 FR 22586.

Assertions and Determinations

GE's Petition for Waiver:

In its December 2006 petition, which DOE granted in February 2008, GE sought a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because it takes neither ambient humidity nor adaptive control anti-sweat heater technology into account. GE seeks a similar waiver in its February 2010 petition. As stated above, GE asserts these new products are identical in function and operation to the basic models listed in GE's 2006 petition with respect to the properties that made those products eligible for a waiver. DOE did not receive any comments on the GE petition.

GE requested it be permitted to use the same alternate test procedure DOE prescribed earlier for GE, and which has since been prescribed for Whirlpool, Electrolux, Samsung and Haier refrigerators and refrigerator-freezers equipped with a similar technology. The alternate test procedure simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the GE decision and order referenced above. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the GE petition for waiver. The FTC staff did not have any objections to granting a waiver to GE.

Conclusion

After careful consideration of all the material that was submitted by GE and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the General Electric Company (Case No. RF–015) is hereby granted as set forth in the paragraphs below.

(2) GE shall not be required to test or rate the following GE models on the basis of the current test procedures contained in 10 CFR part 430, subpart B, appendix A1. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

All models with the letters CFCP1NIY****, CFCP1NIZ****, CFCP1ZIY****, PFCF1NFY****, PFCF1NFZ****, PFCF1PJY****, PFCF1PJZ****, PFCS1NFY****, PFCS1NFZ****, PFCS1PJY****, PFCS1PJZ****, PFQS5PJY****, PFSF5NFY****, PFSF5NFZ****, PFSF5PJY****, PFSF5PJZ****, PFSS5NFY****, PFSS5NFZ****, PFSS5PJY****, PFSS5PJZ****, PGCS1NFY****, PGCS1NFZ****, PGCS1PJY****, PGCS1PJZ****, PGSS5NFY****, PGSS5NFZ****, PGSS5PJY****, PGSS5PJZ****, ZFGB21HY****, ZFGB21HZ****, ZFGP21HY****, ZFGP21HZ****. (The asterisks, or wild cards, denote color or other features that do not affect energy performance.)

(3) GE shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the GE products listed in paragraph (2) only:

(A) The following definition is added at the end of Section 1:

1.13 Variable anti-sweat heater control means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be off during one test and on during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the result of the second test will be derived by performing the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the on position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to: $E_{ON} = E + (\text{Correction Factor})$

where E is determined by sections 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the off position.

Correction Factor = (Anti-sweat Heater Power x System-loss Factor) x (24 hrs/1 day) x (1 kW/1000 W)

where:

Anti-sweat Heater Power = A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

where A1–A10 are defined in the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F. System-loss Factor = 1.3

(4) Representations. GE may make representations about the energy use of its adaptive control anti-sweat heater refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on August 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–20575 Filed 8–18–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–016]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to LG From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–016) that grants to LG Electronics, Inc. (LG) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedure for certain basic models containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's decision and order, LG shall be required to test and rate its refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters using an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective August 19, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611, *E-mail: Michael.Raymond@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7796, *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants LG a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters, provided that LG tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits LG from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on August 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: LG Electronics, Inc. (Case No. RF–016).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." 42 U.S.C. 6291–6309. Part A of Title III includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3).

Today's notice involves residential electric refrigerator and refrigerator-freezer products covered under Part A. The test procedure for residential electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On April 20, 2010, LG filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. The products covered by the petition employ relative humidity sensors and adaptive control anti-sweat heaters, which detect and respond to temperature and humidity conditions, and then activate adaptive heaters as needed to evaporate excess moisture. LG's petition was published in the **Federal Register** on June 18, 2010. 75 FR 34726.

Assertions and Determinations

LG's Petition for Waiver

In its April 2010 petition, LG sought a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because it takes neither ambient humidity nor adaptive technology into account. DOE did not receive any comments on the LG petition.

LG requested that it be permitted to use the same alternate test procedure DOE prescribed for GE, Whirlpool, and other companies manufacturing refrigerators and refrigerator-freezers equipped with a similar technology. Specifically, DOE granted GE, Whirlpool, Electrolux, Samsung, and Haier waivers on February 27, 2008 (73 FR 10425), May 5, 2009 (74 FR 20695), December 15, 2009 (74 FR 66338), March 18, 2010 (75 FR 13122), and June 7, 2010 (75 FR 32175), respectively. The alternate test procedure simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the respective decisions and orders referenced above. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the LG petition for waiver. The FTC staff did not have any objections to granting a waiver to LG.

Conclusion

After careful consideration of all the material that was submitted by LG and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the LG Electronics, Inc. (Case No. RF–016) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate the following LG models on the basis of the current test procedures contained in 10 CFR part 430, subpart B, appendix A1. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

Type	Sales model	Brand
3D (3 door) Basic	LFC2#7##**	LG
3D Water Dispenser only	LFD2#8##**	LG
3D Ice Water Dispenser	LFX2#9##LG	LG
4D Basic	LMC2#7##**	LG
4D Water Dispenser only	LMD2#8##**	LG
4D Ice-Water Dispenser	LMX2#9##**	LG
3D Ice-Water Dispenser	LSFX213ST	Viking
4D Ice-Water Dispenser	LSMX214ST	Viking
All	795.#####.###	Kenmore
2D SXS	LSC23944**	LG
3D Basic	LFC20745**	LG
3D Basic	7831#	Kenmore
3D Basic	LFC23760**	LG
3D Basic	LFC23770**	LG
3D Dispenser	LFD23860**	LG
3D Dispenser	7835#	Kenmore
3D Ice and Water	7841#	Kenmore
3D Ice and Water	LFX23965**	LG
All	501.#####	Kenmore
2D SXS	LRSC26923**	LG
2D SXS	LRSC26925**	LG
2D SXS	5101#	Kenmore
2D SXS	5102#	Kenmore
2D SXS	5103#	Kenmore
2D SXS	LSC27914**	LG
2D SXS	LSC27934**	LG
2D SXS	5107#	Kenmore
2D SXS	5108#	Kenmore
2D SXS	5109#	Kenmore
2D SXS	5131#	Kenmore
2D SXS	5132#	Kenmore
2D SXS	5137#	Kenmore
2D SXS	LSC23924**	LG
2D SXS	LSC23954**	LG
3D Basic	LFC20760**	LG
3D Basic	7130#	Kenmore
3D Basic	7830#	Kenmore
3D Basic	LFC23760**	LG
3D Basic	LFC23770**	LG
3D Dispenser	7834#	Kenmore
3D Dispenser	7835#	Kenmore
3D Ice and Water	7840#	Kenmore
3D Ice and Water	LFX23961**	LG
All	795.#####.###	Kenmore

(3) LG shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the LG products listed in paragraph (2) only:

(A) The following definition is added at the end of Section 1:

1.13 Variable anti-sweat heater control means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be off during one test and on during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the result of the second test will be derived by performing the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the on position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{ON} = E + (Correction Factor)

Where:

E is determined by sections 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the off position.

Correction Factor = (Anti-sweat Heater Power x System-loss Factor) x (24 hrs/1 day) x (1 kW/1000 W)

Where:

Anti-sweat Heater Power = A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

Where A1–A10 are defined in the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.016

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F.

System-loss Factor = 1.3

(4) Representations. LG may make representations about the energy use of its adaptive control anti-sweat heater refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on August 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–20562 Filed 8–18–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12713–002]

Reedsport OPT Wave Park, LLC; Notice of Settlement Agreement and Soliciting Comments

August 10, 2010.

Take notice that the following Settlement Agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–12713–002.

c. *Date Filed:* August 2, 2010.

d. *Applicant:* Reedsport OPT Wave Park, LLC.

e. *Location:* The proposed project would be located in Oregon state waters of the Pacific Ocean about 2.5 miles off the coast near Reedsport, in Douglas County, Oregon. The proposed transmission line would occupy about 5 acres of the Oregon Dunes National Recreation Area, Siuslaw National Forest.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602, Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Dr. George Taylor, Reedsport OPT Wave Park, LLC (OPT), 1590 Reed Road, Pennington, New Jersey 08534–2760; (609) 730–0400.

i. *FERC Contact:* Jim Hastreiter (503) 552–2760 or via e-mail at *james.hastreiter@ferc.gov.*

j. *Deadline for filing comments on the Settlement: August 30, 2010.* Reply comments due *September 15, 2010.*

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/ferconline.asp.* Commenter's can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. OPT filed a settlement agreement on behalf of itself; National Marine Fisheries Service; U.S. Fish and Wildlife Service; U.S. Forest Service; Oregon Department of State Lands; Oregon Department of Environmental Quality; Oregon Department of Land Conservation and Development; Oregon Water Resources Department; Oregon Department of Fish and Wildlife; Oregon Parks and Recreation Department; Oregon Department of Energy; Oregon State Marine Board; Oregon Shores Conservation Coalition; Surfrider Foundation; and Southern Oregon Ocean Resource Coalition.

The settlement agreement resolves among the signatories all issues associated with issuance of an original license for the project regarding construction and operation, including fish and wildlife, aquatic resources and water quality, recreation and public safety, crabbing and fishing, terrestrial resources, and cultural resources. The signatories request that the Commission: (1) Accept the Agreement as an Offer of Settlement; (2) issue an original license for a term of 35 years; and (3) incorporate in their entirety and without modification as enforceable conditions of the license, OPT's obligations under the following terms, which include specific protection, mitigation, and enhancement measures and study and adaptive management requirements: (a) Section 3.3 and Exhibit B–Adaptive Management; (b) Section 3.6–Fish or Wildlife Emergency Circumstance; (c) Section 4.2–Committees; (d) Section 4.3–Inspection, Notice and Site Visit; (e) Appendix A–Aquatic Resources and Water Quality Plan; (f) Appendix B–Recreation and Public Safety Plan; (g) Appendix C–Crabbing and Fishing Plan; (h) Appendix D–Terrestrial and Cultural Resources Plan; and (i) OPT's license application including the project description, Operations and Maintenance Plan, Spill Prevention Control and Countermeasure Plan, and Emergency Response/Recovery Plan.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "e-Library" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–20504 Filed 8–18–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9191–4]

Proposed Cercla Administrative Order On Consent for the Kerber Creek Site, Saguache County, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122 (i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 USC 9622(I), notice is hereby given of a proposed Administrative Order on Consent ("AOC") under sections 104, 106, 107, and 122 of CERCLA, 42 U.S.C. 9604, 9606, 9607, and 9622, between EPA and Trout Unlimited, Inc. ("Trout Unlimited") regarding the Kerber Creek Site located in the Rio Grande Basin near Villa Grove, Saguache County, Colorado. The property which is the subject of this proposed AOC is all areas to which hazardous substances and/or pollutants or contaminants, have come to be located along the approximately 17 miles of Kerber Creek stretching from the Bonanza town site, below the Forest Service boundary, and extending to the town of Villa Grove. This AOC requires that Trout Unlimited perform the following activities: Develop a watershed plan, remove tailings with elevated concentrations of metals from the streamside, perform phytostablilization, revegetate sites, stabilize stream banks, and monitor sinuosity, width, depth, density of microinvertebrates and fishery, upland vegetation cover, stability of stream banks concentration of metals, and habitat trends, all with respect to Kerber Creek. The performance of this work shall be approved and monitored by EPA.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received on the AOC and may modify or withdraw its consent to the AOC, if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, 2nd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before September 20, 2010.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 1595 Wynkoop Street, 2nd Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to William G. Ross, Enforcement Specialist/SEE (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the Kerber Creek Site AOC in Saguache County, Colorado.

FOR FURTHER INFORMATION CONTACT: William G. Ross, Enforcement Specialist/SEE (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6208.

Dated: August 12, 2010.

Sharon Kercher,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8.

[FR Doc. 2010–20580 Filed 8–18–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9191–2]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by American Bottom Conservancy in the United States District Court for the Southern District of Illinois: *American Bottom Conservancy* v. *Jackson,* No. 10–292–GPM (S.D. IL). Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Illinois Environmental Protection Agency to U.S. Steel Corporation's Granite City Works facility. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by December 17, 2010, or within 30 days of the entry date of this Consent Decree, whichever is later.

DATES: Written comments on the proposed consent decree must be received by *September 20, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0679, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Gautam Srinivasan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5647; fax number (202) 564–5603; e-mail address: *srinivasan.gautam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Illinois Environmental Protection Agency to U.S. Steel Corporation's Granite City Works facility. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by December 17, 2010, or within 30 days of the entry date of this Consent Decree, whichever is later. The proposed consent decree further states that EPA shall expeditiously deliver notice of such action on the permit to the Office of the Federal Register for prompt publication and, if EPA's response contains an objection in whole or in part, transmit within 15 business days following signature the response to the Illinois Environmental Protection Agency. In addition, the proposed consent decree sets the attorneys' fees at $3,840.00, and states that, after EPA fulfills its obligations under the decree, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0679) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 13, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–20579 Filed 8–18–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, August 23, 2010.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Implications of Dodd-Frank Reform Act for Board Organization and Staffing. (This item was originally announced on July 27, 2010, for a closed meeting on August 3, 2010.)

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–20677 Filed 8–17–10; 11:15 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60–Day 10–0307]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The Gonococcal Isolate Surveillance Project (GISP) (OMB No. 0920–0307 exp. 3/31/2011)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The objectives of GISP are: (1) To monitor trends in antimicrobial susceptibility of strains of *Neisseria gonorrhoeae* in the United States and (2) to characterize resistant isolates. GISP provides critical surveillance for antimicrobial resistance, allowing for informed treatment recommendations. Monitoring antibiotic susceptibility is critical since *Neisseria gonorrhoeae* has demonstrated the consistent ability to gain antibiotic resistance. GISP was established in 1986 as a voluntary surveillance project and now involves 5 regional laboratories and 30 publicly funded sexually transmitted disease (STD) clinics around the country. The STD clinics submit up to 25 gonococcal isolates per month to the regional laboratories, which measure susceptibility to a panel of antibiotics. Limited demographic and clinical information corresponding to the isolates are submitted directly by the clinics to CDC.

During 1986–2009, GISP has demonstrated the ability to effectively achieve its objectives. The emergence of resistance in the United States to penicillin, tetracyclines, and fluoroquinolones among *Neisseria gonorrhoeae* isolates was identified through GISP. Increased prevalence of fluoroquinolone-resistant *N. gonorrhoeae* (QRNG), as documented by GISP data, prompted CDC to update treatment recommendations for gonorrhea in CDC's Sexually Transmitted Diseases Treatment Guidelines, 2006 and to release an MMWR article stating that CDC no longer recommended fluoroquinolones for treatment of gonococcal infections.

Under the GISP protocol, each of the 30 clinics submit an average of 20 isolates per clinic per month (*i.e.,* 240 times per year) recorded on Form 1. The estimated time for clinical personnel to abstract data for Form 1 is 11 minutes per response.

Each of the 5 Regional laboratories receives and processes an average of 20 isolates from 6 different clinics per month (*i.e.,* 120 isolates per regional laboratory per month) using Form 2. For Form 2, the annual frequency of responses per respondent is 1,440 (120 isolates × 12 months). Based on previous laboratory experience, the estimated burden for each participating laboratory for Form 2 is 1 hour per response, which includes the time required for laboratory processing of the patient's isolate, gathering and maintaining the data needed, and completing and reviewing the collection of information. For Form 3, a "response" is defined as the processing and recording of Regional laboratory data for a set of 7 control strains. It takes approximately 12 minutes to process and record the Regional laboratory data on Form 3 for one set of 7 control strains, of which there are 4 sets. The number of responses per respondent is 48 (4 sets × 12 months). There is no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
Clinic	Form 1	30	240	11/60	1,320
Laboratory	Form 2	5	1,440	1	7,200

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
	Form 3	5	48	12/60	48
Total		40			8,568

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–20569 Filed 8–18–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10GT]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Behavioral Assessment Component of the Behavioral Assessment and Rapid Testing (BART) Project—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, (NCHHSTP), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

This Behavioral Assessment and Rapid Testing project will involve conducting behavioral assessments and rapid HIV testing at a variety of events serving groups at high risk for acquiring or transmitting HIV infection. Behavioral assessments will be conducted using one protocol and one research agenda but at events serving different minority and hard-to-reach populations. This project will address the increasing rates of HIV infection among African Americans (AAs) and men who have sex with men as well as the need for early detection and linkage to health care for HIV-infected persons. The behavioral assessment component will provide the opportunity to describe the risk profiles and prevalence of unrecognized infection among individuals reachable for HIV counseling and testing at these events. Collected data will be used to develop risk reduction interventions that are appropriate for the attendees of future events that attract persons who may be at high risk for HIV infection. The proposed project addresses "Healthy People 2010" priority area(s) of identifying new HIV infections and is in alignment with NCHHSTP performance goal(s) to strengthen the capacity nationwide to monitor the HIV epidemic, develop and implement effective HIV prevention interventions, and evaluate prevention programs.

The purpose of the proposed data collection is to collect behavioral data at selected public events serving specific high-risk populations and to increase the proportion of at-risk persons who are aware of their HIV status. The behavioral assessment component of the project addresses the need for increased behavioral data among some high-risk groups that are more difficult to access or represent increasingly greater proportions of the HIV epidemic.

A convenience sample will be used to select attendees at (1) Gay Pride; (2) Minority Gay Pride; (3) black spring break; and (4) cultural and social events attracting large numbers of African Americans. Trained interviewers will select and approach event attendees. A screener questionnaire will be used to determine participation eligibility and obtain oral consent. Approximately 7,000 individuals will be approached and screened (through a 2-minute interview) for eligibility to participate each year. Approximately 5,600 individuals are expected to be eligible and participate in the 5- to 15-minute behavioral assessment interview each year. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondent	Form	Number of respondents	Number of responses per espondent	Average burden per response (hours)	Total burden (in hours)
—African American males and females (18+ yrs) at cultural/social events. —Males (18+ yrs) at gay pride events —Racial/ethnic minority males (18+ yrs) at minority gay pride events —African American males and females (18–35 yrs) at spring break festivals	Eligibility Screener ...	7,000	1	2/60	233
—African American males and females (18+ yrs) at cultural/social events.	Behavioral Assessment.	5,600	1	15/60	1,400

ESTIMATE OF ANNUALIZED BURDEN TABLE—Continued

Respondent	Form	Number of respondents	Number of responses per espondent	Average burden per response (hours)	Total burden (in hours)
—Males (18+ yrs) at gay pride events —Racial/ethnic minority males (18+ yrs) at minority gay pride events —African American males and females (18–35 yrs) at spring break festivals					
Total					1,633

Dated: August 13, 2010.

Thelma Sims,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–20568 Filed 8–18–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0420]

Agency Information Collection Activities; Proposed Collection; Comment Request; Testing Communications on the Food and Drug Administration/Center for Veterinary Medicine's Regulated Products Used in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on communication studies involving FDA/Center for Veterinary Medicine (CVM) regulated products intended for use in animals. This information will be used to explore concepts of interest and assist in the development and modification of communication messages and campaigns to fulfill the Agency's mission in protecting the public health.

DATES: Submit either electronic or written comments on the collection of information by October 18, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Testing Communications on the Food and Drug Administration/Center for Veterinary Medicine's Regulated Products Used in Animals—21 U.S.C. 393 (d)(2)(D)—(OMB Control Number–0910–NEW)

CVM has authorization under section 903(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D) to conduct educational and public information programs relating to the safety of CVM-regulated products. Further, CVM is authorized to conduct this needed research to ensure that these programs have the highest likelihood of being effective. Thus, CVM concludes that improving communications about the safety of regulated animal drugs, feed, food additives, and devices will involve many research methods, including individual indepth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research, it will provide critical knowledge needed about target audiences to develop messages and campaigns about the use of animal drugs, feed, food additives, and devices. Knowledge of both the consumer and the veterinary professional decisionmaking processes will provide a better understanding of target audiences that FDA will need in order to design effective communication strategies, messages, and labels. These communications will aim to improve public understanding of the risks and benefits of using regulated animal drugs, feed, food additives, and devices by providing users with a better context in which to place risk information more completely. Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target audience will allow

FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings. Third, as evaluative research, it will allow FDA to ascertain the effectiveness of the messages and the distribution method of these messages in achieving the objectives of the message campaign. Evaluation of campaigns is a vital link in continuous improvement of communications at FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 U.S.C. 393(d)(2)(D)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Individual indepth interviews	360	1	360	.75	270
General public focus group interviews	144	1	144	1.5	216
Intercept interviews: Central location	600	1	600	.25	150
Intercept Interviews: Telephone[2]	10,000	1	10,000	.08	800
Self-administered surveys	2,400	1	2,400	.25	600
Gatekeeper reviews	400	1	400	.50	200
Omnibus surveys	2,400	1	2,400	.17	408
Total (general public)					2,644
Total veterinarian/scientific expert focus group interviews	144	1	144	1.5	216
Total Burden					2,860

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] These are brief interviews with callers to test message concepts and strategies following their call-in request to an FDA Center 1–800 number.

FDA's estimate for the annual reporting burden of the proposed collection of information requirements is based on recent prior experience with the various types of data collection methods described previously. FDA projects about 30 studies for which the annual reporting burden is estimated to be 2,860 hours.

Dated: August 13, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–20482 Filed 8–18–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; STAR METRICS—Science and Technology in America's Reinvestment: Measuring the Effects of Research on Innovation, Competitiveness and Science

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Science Policy Analysis (OSPA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: STAR METRICS—Science and Technology for America's Reinvestment: Measuring the Effects of Research on Innovation, Competitiveness and Science.

Type of Information Collection Request: Extension.

Need and Use of Information Collection: The aim of STAR METRICS is twofold. The initial goal of STAR METRICS is to provide mechanisms that will allow participating universities and Federal agencies with a reliable and consistent means to account for the number of scientists and staff that are on research institution payrolls, supported by Federal funds. In subsequent generations of the program, it is hoped that STAR METRICS will allow for measurement of science impact on economic outcomes (such as job creation), on knowledge generation (such as citations and patents) as well as on social and health outcomes.

Frequency of Response: Quarterly.

Affected Public: Universities.

Type of Respondents: University administrators.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 4.

Average Burden Hours per Response: Reduced by 156.

Estimated Total Annual Burden Hours Requested: Reduced by 15,600.

The annualized cost to respondents is estimated to be reduced by $780,000. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Note: The following table is acceptable for the Respondent and Burden Estimate information, if appropriate, instead of the text as shown above.

A.12–1—ESTIMATES OF NET HOUR BURDEN REDUCTION

Type of respondents	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
Stage 1: Immediate	100	1	72	+7,200
Stage 1: Expected Reduction in Current burden (assuming 100 universities and at median)	100	4	40	−16,000
Net reduction in burden	100	4		−8,800
Stage 1: Future	100	4	1.0	+400
Stage 2: Expected Reduction in Current burden (assuming 100 universities and at median)	100	4	40	−16,000
Net reduction in burden	100	4		−15,600

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Stefano Bertuzzi, Health Science Policy Analyst, Office of Science and Technology Policy, OSP, OD; NIH, Building 1, Room 218, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number 301–495–9286 or e-mail your request, including your address to: *stefano.bertuzzi@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 12, 2010.

Lynn D. Hudson,

Director, Office of Science Policy Analysis, National Institutes of Health.

[FR Doc. 2010–20614 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-10–0798]

Proposed Data Collections Submitted for Public Comment and Recommendations; Correction

Centers for Disease Control and Prevention

Notice; Correction

The Centers for Disease Control and Prevention published a document in the **Federal Register** titled 60-day 10–0798. The document contained the incorrect OMB number and expiration date.

FOR FURTHER INFORMATION CONTACT: Maryam Daneshvar, 404–639–4604

Correction

In the **Federal Register** of August 12, 2010, Volume 75, Number 155, in FR Doc. 2010–19911 page 48972, under the Proposed Project paragraph correct (OMB No. 0920–0753 exp. 10/31/2010) to read: (OMB No. 0920–0798 exp. 1/31/2011).

Dated: August 12, 2010.

Maryam I, Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–20570 Filed 8–18–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Expanded Human Immunodeficiency Virus (HIV) Testing for Disproportionately Affected Populations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

Notice of Intent to increase funding available to make awards under the Centers for Disease Control and Prevention Funding Opportunity Announcement CDC–RFA–PS10–10138, "Expanded Human Immunodeficiency Virus (HIV) Testing for Disproportionately Affected Populations". Additional funding from the Patient Protection and Affordable Care Act has been allocated for awards to state and county and local public health departments with at least 175 estimated combined AIDS diagnoses among Blacks/African Americans and Hispanics/Latinos in 2007.

SUMMARY: This notice provides public notice of CDC's intent to increase available funding for the Centers for Disease Control and Prevention Funding Opportunity Announcement PS10–10138, "Expanded Human Immunodeficiency Virus (HIV) Testing for Disproportionately Affected Populations" to make awards to state and county and local public health departments. It is the intent of CDC to increase the amount of funds available to applicants who applied for awards under the previously announced funding opportunity CDC–RFA–PS10–10138, which closed on June 24, 2010.

CDC received additional funding through the Patient Protection Affordable Care Act (PPACA), Section 4002 Prevention and Public Health Fund. Accordingly CDC adds the following information to the previously published funding opportunity announcement:

—*Catalog of Federal Domestic Assistance Number:* 93.523 The Affordable Care Act: Human Immunodeficiency Virus (HIV) Prevention and Public Health Fund Activities.

—*Authority:* This program is authorized under Sections 301 and 318 of the Public Health Service Act (42 U.S.C. Section 241 and 247c), as amended, and Section 4002 of the Patient

Protection and Affordable Care Act (Pub. L. 111–148).

—*Reporting Requirements:* Recipients of the PPACA funds through this funding opportunity announcement are required to comply with the reporting requirements, terms and conditions set forth in the published version of the PS10–10138, "Expanded Human Immunodeficiency Virus (HIV) Testing for Disproportionately Affected Populations" (CDC–RFA–PS10–10138).

—CFDA Number 93.523 The Affordable Care Act: Human Immunodeficiency Virus (HIV) Prevention and Public Health Fund Activities is the PPACA-specific CFDA number for this initiative. It is included in addition to the CFDA Number 93.940, HIV Prevention Activities for Health Departments, published in the above-referenced Funding Opportunity Announcement (FOA).

Award Information:

Type of Award: Cooperative Agreement.

Fiscal Year Funds: Fiscal Year 2010, Funding for this announcement will include a combination of HIV Prevention funding and funds from the PPACA, Prevention and Public Health Fund. Available funding amounts, including the additional PPHF funds, are as follows.

Part A—HIV Screening and HIV Counseling, Testing, and Referral

Approximate Current Fiscal Year Funding: Up to $60,000,000 total (to include up to $55,633,000 in Enhanced HIV Testing funds and adding $4,367,000 in Patient Protection and Affordable Care Act of 2010 funds).

Approximate Total Project Period Funding: $166,899,000. (This amount is an estimate, and is subject to availability of funds. This amount includes direct and indirect costs.)

Approximate Number of Awards: 30.

Approximate Average Award: $2,000,000. The average awards will be proportionately based on estimated combined 2007 Black/African American and Hispanic/Latino AIDS diagnoses for eligible jurisdictions. (These amounts are for the first 12-month budget period, and include both direct and indirect costs.)

Floor and Ceiling of Individual Award Ranges:

Jurisdiction	Floor of individual award range	*REVISED* Ceiling of individual award range*
Florida	$4,307,446	$6,818,721
New York City	3,998,517	6,329,161
California	2,482,306	3,926,423
Texas	2,094,529	3,311,912
New York State	1,861,862	2,943,206
Georgia	1,788,184	2,826,449
Maryland	1,700,288	2,687,160
North Carolina	1,303,462	2,058,310
Louisiana	1,302,170	2,056,262
Puerto Rico	1,258,222	1,986,618
Houston	1,197,470	1,890,344
District of Columbia	1,140,596	1,800,216
New Jersey	1,059,163	1,671,169
Philadelphia	1,042,359	1,644,540
South Carolina	985,485	1,554,411
Chicago	968,681	1,527,782
Virginia	852,348	1,343,429
Los Angeles	803,229	1,265,591
Pennsylvania	801,937	1,263,543
Michigan	798,059	1,257,398
Tennessee	774,792	1,220,527
Illinois	707,578	1,114,012
Ohio	684,311	1,077,141
Massachusetts	667,507	1,050,512
Alabama	642,948	1,011,593
Mississippi	605,463	952,191
Connecticut	602,878	948,093
Missouri	549,881	864,111
Arizona	542,126	851,820
San Francisco	476,204	747,353

*These ceilings are for the first 12-month budget period and include direct and indirect costs.

Part B—Enhanced Linkage to Medical Care and Partner Services

Approximate Current Fiscal Year Funding: $4,000,000.

Approximate Total Project Period Funding: $12,000,000 (This amount is an estimate, and is subject to availability of funds. This amount includes direct and indirect costs.)

Approximate Number of Awards: Up to 20.

Approximate Average Award: $200,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Individual Award Range: $ 150,000.

Ceiling of Individual Award Range: $ 225,000 (This ceiling is for the first 12-month budget period and includes direct and indirect costs.)

Both Part A (HIV Screening and HIV Counseling, Testing, and Referral) and Part B (Enhanced Linkage to Medical Care and Partner Services)

Anticipated Award Date: September 30, 2010.

Budget Period Length: 12 months.

Project Period Length: 3 years (Availability of PPACA funds beyond the initial 12 months will be based on availability of future funding.)

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

Application Selection Process

CDC will apply the same selection methodology published in the CDC–RFA–PS10–10138.

Funding Authority

CDC will add the PPACA Authority to that which is currently reflected in the published Funding Opportunity CDC–RFA–PS10–10138. The revised funding authority language will read:

—This program is authorized under Sections 301 and 318 of the Public Health Service Act (42 U.S.C. Section 241 and 247c), as amended, *and Section 4002 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).*

DATES: The effective date for this action is August 19, 2010 and remains in effect until the expiration of the project period of the PPACA funded applications.

FOR FURTHER INFORMATION CONTACT: Elmira Benson, Acting Deputy Director, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2802, e-mail: *Elmira.Benson@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148. PPACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and PPACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to "provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs." PPACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

PPACA legislation affords an important opportunity to advance public health across the lifespan and to reduce health disparities by supporting an intensive community approach to chronic disease prevention and control.

Therefore, increasing funding available to applicants under this FOA using the PPHF to further HIV prevention programs is consistent with the purpose of the PPHF, as stated above, to provide for an expanded and sustained national investment in prevention and public health programs. Further, the Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: August 13, 2010.

Tanja Popovic, MD, PhD, F(AMM), AM(AAFS),

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–20572 Filed 8–18–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: September 27, 2010.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: Report of the Director, NIDCR.

Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, 10, Bethesda, MD 20892.

Closed: 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 13, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20610 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Subcommittee for Planning the Annual Strategic Plan Updating Process of the Interagency Autism Coordinating Committee (IACC). The Subcommittee meeting will be conducted as a telephone conference call and webinar.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of Meeting: Subcommittee for Planning the Annual Strategic Plan Updating Process.

Date: September 21, 2010.

Time: 1 p.m. to 3 p.m. Eastern Time.

Agenda: To discuss plans for updating the IACC Strategic Plan for ASD Research.

Place: No in-person meeting; conference call and webinar only.

Webinar Access: https://www2.gotomeeting.com/register/461944091.

Registration: No pre-registration required.

Conference Call: Dial: 800–369–3340. Access code: 8415008.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8185a, Bethesda, MD 20892–9669, Phone: (301) 443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public through a conference call phone number and webinar. Individuals who participate using this service and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 10 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard.

If you experience any technical problems with the Web presentation tool, please contact GoToWebinar at (800) 263–6317. To access the Web presentation tool on the Internet the following computer capabilities are required: (a) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (b) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (c) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (d) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (e) Java Virtual Machine enabled (Recommended).

Meeting schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: August 12, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20611 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The Interagency Autism Coordinating Committee (IACC) Services Subcommittee will be meeting on Monday, September 13, 2010. The subcommittee plans to discuss issues related to services and supports for individuals with autism spectrum disorder (ASD) and their families as well as plans for an IACC workshop on services and supports that will be held in November 2010. This meeting will be open to the public and will be accessible by Webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Services Subcommittee.

Date: September 13, 2010.

Time: 1 p.m. to 4 p.m. Eastern Time.

Agenda: The subcommittee plans to discuss issues related to services and supports for individuals with autism spectrum disorder (ASD) and their families as well as plans for an IACC workshop on services and supports that will be held in November 2010.

Place: National Institute of Mental Health, 6001 Executive Boulevard, NSC, Conference Room A1/A2, Rockville, MD 20852.

Webcast Live: http://videocast.nih.gov/.

Conference Call Access: Dial: 888–456–0353, Access code: 2177022.

Cost: The meeting is free and open to the public.

Registration: http://www.acclaroresearch.com/oarc/9-13-10_IACC/. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

Access: Metro accessible—White Flint Metro (Red Line).

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Bethesda, MD 20892–9669, Phone: 301–443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public through a conference call phone number and Webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the Webcast live or conference call, please-mail *IACCTechSupport@acclaroresearch.com.*

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

To access the Webcast live on the Internet the following computer capabilities are required: (a) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (b) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (c) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (d) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (e) Java Virtual Machine enabled (Recommended).

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered. Please note: Online pre-registration will close by 5 p.m. the day before the meeting. After that time, registration will have to be done onsite the day of the meeting.

Meeting schedule subject to change.

Information about the IACC and a registration link for this meeting are available on the Web site: *http://www.iacc.hhs.gov.*

Dated: August 12, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20609 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 23–24, 2010.

Closed: September 23, 2010, 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: September 24, 2010, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 31, C Wing, 31 Center Drive, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 12, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20608 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Clinical and Care Delivery Member Conflict SEP.

Date: September 16, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Melinda Jenkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–443–8519.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: September 27–28, 2010

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: September 28–29, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications,

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Cost, Effectiveness, and Decision-Making in Use of CAM.

Date: September 29–30, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenchi Liang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681. *schwarte@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section,

Date: September 30–October 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Reed A Graves, PhD, Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics

Date: September 30–October 1, 2010.

Time: 11 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

Date: October 3–4, 2010.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: October 3–4, 2010.

Time: 7 p.m. to 8 a.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Hotel, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Richard A Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: October 4, 2010.
Time: 7 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Bellevue Hotel, 100 112th Avenue, NE., Bellevue, WA 98004.
Contact Person: Sooja K Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.
Date: October 4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.
Contact Person: Fungai Chanetsa, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Anterior Eye Disease Study Section.
Date: October 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Jerry L Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.
Date: October 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.
Date: October 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.
Date: October 4–5, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The National Conference Center, 18980 Upper Belmont Place, Leesburg, VA 20176.
Contact Person: Lee S. Mann, JD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.
Date: October 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.
Date: October 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Bellevue Hotel, 100 112th Avenue, NE., Bellevue, WA 98004.
Contact Person: David Weinberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–1044, *David.Weinberg@nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.
Date: October 4, 2010.
Time: 8 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Najma Begum, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Molecular Imaging and Probe Development.
Date: October 4–5, 2010.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Eileen W Bradley, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 13, 2010.

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20588 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.
Date: September 23, 2010.
Open: 9:45 a.m. to 2:30 p.m.
Agenda: Report by the Director, Associate Director for Extramural Research, Associate Director for Translational Research, and Associate Director for Clinical Trials, NINDS; and other administrative and program developments.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Closed: 2:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20587 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group, NST–1 Subcommittee.

Date: September 27–28, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *Benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: October 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western Tuscan Inn, 425 North Point Street, San Francisco, CA 94133.

Contact Person: Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20586 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R24 RFA.

Date: September 16, 2010.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, P50 (Ache).

Date: September 28, 2010.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03—Hearing and Balance.

Date: October 5, 2010.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20585 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biology of Macromolecular Assemblies.

Date: September 1, 2010.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular and Molecular Aspects of Neurodevelopment.

Date: September 9, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Investigations on Primary Immunodeficiency Diseases.

Date: September 28, 2010.

Time: 11 a.m. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: September 30–October 1, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th Street, NW., Washington, DC 20006.

Contact Person: David B. Winter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Immunology IRG, 4th Floor, Rm. 4204, 6701 Rockledge Drive, RKII, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: September 30–October 1, 2010.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20584 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Nonhuman Primate Core Humoral Immunology Vaccine Laboratory.

Date: September 9, 2010.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jay Bruce Sundstrom, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drvie, MSC–7616, Room 3119, Bethesda, MD 20892–7616, 301–496–2550, *sundstromj@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20612 Filed 8–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0274]

Oversight of Laboratory Developed Tests; Public Meeting; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until September 15, 2010, the comment period for the notice that published in the **Federal Register** of Thursday, June 17, 2010 (75 FR 34463). In the notice, FDA requested input and comments from interested stakeholders on the agency's oversight of laboratory developed tests (LDTs). FDA is reopening the comment period to update comments and to receive any new information.

DATES: Submit either electronic or written comments and information by September 15, 2010.

ADDRESSES: Submit electronic comments or information to *http://www.regulations.gov.* Submit written comments or information to the Division of Dockets Management (HFA–305), Food and Drug Administration,

5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Katherine Serrano, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5613, Silver Spring, MD 20993, 301–796–6652, email: *Katherine.serrano@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 17, 2010 (75 FR 34463), FDA published a notice announcing a public meeting on July 19 and 20, 2010, and the opening of a public docket to seek input and comments from interested stakeholders to discuss the agency's oversight of LDTs. Interested persons were originally given until August 15, 2010, to comment on information.

II. Request for Comments

Following publication of the June 17, 2010, notice, FDA received a request to allow interested persons additional time to comment. The requester asserted that the initial time period was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues.

III. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–20489 Filed 8–18–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 16025 B Jacintoport Blvd., Channelview, TX 77015, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on April 27, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 9, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–20529 Filed 8–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 1150–80 Sylvan Street, Linden, NJ 07036, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on May 12, 2010. The next triennial inspection date will be scheduled for May 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 9, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–20527 Filed 8–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1123 Highway 43, Saraland, AL 36571, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on April 6, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 9, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–20530 Filed 8–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Intertek USA, Inc., as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Intertek USA, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Intertek USA, Inc., Carr 901, Km. 2.7 Bo. Camino Nuevo, Yabucoa, PR 00767, has been accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation of Intertek USA, Inc., as commercial laboratory became effective on May 12, 2010. The next triennial inspection date will be scheduled for May 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 9, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–20528 Filed 8–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of American Cargo Assurance, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of American Cargo Assurance, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, American Cargo Assurance, 1512 South Houston Road, Houston, TX 77502, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of American Cargo Assurance, as commercial gauger became effective on May 28, 2010. The next triennial inspection date will be scheduled for May 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 9, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–20531 Filed 8–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of American Cargo Assurance, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of American Cargo Assurance, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, American Cargo Assurance, 3417–A Maplewood, Sulphur, LA 70663, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection

by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of American Cargo Assurance, as commercial gauger became effective on May 18, 2010. The next triennial inspection date will be scheduled for May 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 9, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–20532 Filed 8–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Los Angeles Bunker Surveyors, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Los Angeles Bunker Surveyors, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Los Angeles Bunker Surveyors, Inc., 214 N. Marine Ave., Wilmington, CA 90744, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Los Angeles Bunker Surveyors, Inc., as commercial gauger became effective on April 30, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 9, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–20526 Filed 8–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO250000–L12200000.PM0000; OMB Control Number 1004–0119]

Information Collection; Permits for Recreation on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0119 under the Paperwork Reduction Act. This control number includes paperwork requirements in 43 CFR part 2930, which pertains to permits for recreation and public lands.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before September 20, 2010 in order to be assured of consideration.

ADDRESSES: Submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0119), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. Please send a copy of your comments by electronic mail to *jean_sonneman@blm.gov* or by fax to Jean Sonneman at 202–912–7102.

FOR FURTHER INFORMATION CONTACT: You may contact Judi Zuckert at 202–912–7093. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to contact Ms. Zuckert. You may also contact Ms. Zuckert to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

SUPPLEMENTARY INFORMATION: The following information is provided for the information collection:

Title: Permits for Recreation on Public Lands (43 CFR part 2930).

Forms: Form 2930–1, Special Recreation Permit Application.

OMB Number: 1004–0119.

Type of Review: Revision of a currently approved information collection.

Abstract: This notice pertains to information collections that are necessary for the management of recreation on public lands. The BLM is required to manage commercial, competitive and organized group recreational uses of the public lands, and individual use of special areas. This information allows the BLM to collect the required information to authorize and collect fees for recreation use on public lands. The currently approved information collection consists of the collection of non-form information in accordance with 43 CFR part 2930, and Form 2930–1 (Special Recreation Permit Application and Permit). We are proposing to revise Form 2930–1 to be used only as a Special Recreation Permit Application. Responses are required to obtain or retain a benefit.

Frequency of Collection: On occasion for all aspects of this information collection.

Annual Burden Hours: 14,776, based on 4 hours per response; 3,694 responses.

Annual Non-Hour Burden Cost: There are no processing fees associated with this collection.

60–Day Notice: As required in 5 CFR 1320.8(d), the BLM published the 60-day notice in the **Federal Register** on March 25, 2010 (75 FR 14458) soliciting comments from the public and other interested parties. The comment period closed on May 24, 2010. The BLM received one comment. The comment did not address, and was not germane to, this information collection; rather, it was a general invective about the Department of the Interior and the BLM. Therefore, we have no response to the comment.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB Control Number 1004–0119 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–20606 Filed 8–18–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2010–N168; 81331–1334–8TWG–W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 9:30 a.m. to 5 p.m. on Monday, September 13, 2010.

ADDRESSES: The meeting will be held at the Trinity Alps Golf Course, 118 Fairway Drive, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Jennifer Faler, Acting Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; e-mail: *jfaler@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- TMC Chair report,
- Hatchery operations/Ad-Hoc,
- Acting Executive Director's Report,
- TRRP interface with CVO,
- Klamath River flow augmentation and coordination,
- Science program report,
- Rig/Channel rehabilitation,
- TAMWG involvement in TRRP workgroups, and
- TAMWG recommendations/status of previous recommendations.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: August 12, 2010.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2010–20571 Filed 8–18–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N179]
[96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before September 20, 2010.We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by September 20, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, along with the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*),[Doc regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

Endangered Species

Applicant: Schubot Exotic Bird Health Center, College Station, Texas;

PRT–17193A

The applicant requests a permit to importation of crop contents obtained from 20–50 day old nestlings, Abaco parrot (*Amazona leucocephala bahamensis*), for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Ferdinand Fercos-Hantig and Anton Fercos-Hantig, Las Vegas, NV;

PRT–073403, 073404, 114454, 206853, and 809334

The applicant requests the re-issuance of permits for the re-export and re-import of four captive-born tigers and one captive-born African leopard to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: [073403, Sherni/Victoria; 073404, Picasso; 809334, Sarina; 114454, Dora; and 206853, Allaya]. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Earl Schomburg, Danville, IL; PRT–236049

Applicant: Harold Meyers, Dalhart, TX; PRT–17885A

Applicant: Roger Hosfelt, Shippensburg, PA; PRT–236080

Applicant: John Parker, Dallas, TX; PRT–18423A

Applicant: Ludwig Bohler, Far Hills, NJ; PRT–19636A

Endangered Marine Mammals and Marine Mammals

Applicant: EcoHealth Alliance, Inc., St. Petersburg, FL; PRT–107933

The applicant requests an amendment to the permit (previously issued under the name, Wildlife Trust, Inc.) to import of biological samples from West African manatees (*Trichechus senegalensis*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: August 13, 2010

Brenda Tapia

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. 2010–20589 Filed 8–18–10; 8:45 am]

BILLING CODE S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–733]

In the Matter of Certain Flat Panel Digital Televisions and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 16, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Vizio, Inc. of Irvine, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flat panel digital televisions and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,511,096 ("the '096 patent"); U.S. Patent No. 5,621,761 ("the '761 patent"); U.S. Patent No. 5,703,887 ("the '887 patent"); U.S. Patent No. 5,745,522 ("the '522 patent"); U.S. Patent No. 5,511,082 ("the '082 patent"); U.S. Patent No. 5,396,518 ("the '518 patent"); and U.S. Patent No. 5,233,629 ("the '629 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Smith, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 12, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flat panel digital televisions and components thereof that infringe one or more of claims 22–25 of the '096 patent; claim 11 of the '761 patent; claims 15–23 of the '887 patent; claims 1, 5, 12, and 13 of the '522 patent; claim 1 of the '082 patent; claims 11–14 of the '518 patent; and claims 10 and 12–17 of the '629 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Vizio, Inc., 39 Tesla, Irvine, CA 92618.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LG Electronics, Inc., LG Twin Towers, 20 Yoido-dong, Youngdungpo-Gu, Seoul, 150–721, South Korea.

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

(c) The Commission investigative attorney, party to this investigation, is Stephen Smith, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 13, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–20501 Filed 8–18–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–733]

Certain Flat Panel Digital Televisions and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 16, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Vizio, Inc. of Irvine, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flat panel digital televisions and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,511,096 ("the '096 patent"); U.S. Patent No. 5,621,761 ("the '761 patent"); U.S. Patent No. 5,703,887 ("the '887 patent"); U.S. Patent No. 5,745,522 ("the '522 patent"); U.S. Patent No. 5,511,082 ("the '082 patent"); U.S. Patent No. 5,396,518 ("the '518 patent"); and U.S. Patent No. 5,233,629 ("the '629 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen Smith, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 12, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flat panel digital televisions and components thereof that infringe one or more of claims 22–25 of the '096 patent; claim 11 of the '761 patent; claims 15–23 of the '887 patent; claims 1, 5, 12, and 13 of the '522 patent; claim 1 of the '082 patent; claims 11–14 of the '518 patent; and claims 10

and 12–17 of the '629 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Vizio, Inc., 39 Tesla, Irvine, CA 92618.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LG Electronics, Inc., LG Twin Towers, 20 Yoido-dong, Youngdungpo-Gu, Seoul, 150–721, South Korea.

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

(c) The Commission investigative attorney, party to this investigation, is Stephen Smith, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: August 13, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–20523 Filed 8–18–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Barrett,* No. 4:07–CV–128–TSL–LRA, was lodged with the U.S. District Court for the Southern District of Mississippi on August 13, 2010.

The proposed Consent Decree concerns a complaint filed by the United States of America against Gaston Barrett and Central Mississippi Properties, Inc., pursuant to sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) & (d), to obtain injunctive relief and civil penalties against the defendants for the unauthorized discharge of pollutants in Neshoba County, Mississippi, in violation of sections 301(a), 309(d), and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1319(d), and 1344. The proposed Consent Decree resolves these allegations by requiring the defendants to restore wetlands, to perform mitigation, and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Andrew J. Doyle, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States* v. *Barrett,* DJ # 90–5–1–1–17716.

The proposed Consent Decree may be examined at the Clerk's Office, U.S. District Court, 245 East Capitol Street, Jackson, Mississippi 39225–3552, or electronically at *https://ecf.mssd.uscourts.gov* or *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Maureen M. Katz,

Assistant Section Chief, Environment & Natural Resources Division.

[FR Doc. 2010–20513 Filed 8–18–10; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Agreements in Force as of December 31, 2009, Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

AGENCY: Office of the Federal Register, NARA.

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Taipei Economic and Cultural Representative Office in the United States (formerly the Coordination Council for North American Affairs) in order to maintain cultural, commercial and other unofficial relations between the American people and the people of Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of The American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people of Taiwan are maintained on a non-governmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) was established as the nongovernmental Taiwan counterpart to AIT.

On October 10, 1995 the CCNAA was renamed the Taipei Economic and Cultural Representative Office in the United States (TECRO). Under section 12 of the Act, agreements concluded between AIT and TECRO (CCNAA) are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, Suite 1700, Arlington, Virginia 22209. For further information, please telephone (703) 525–8474, or fax (703) 841–1385.

Following is a list of agreements between AIT and TECRO (CCNAA) which were in force as of December 31, 2009.

Dated: August 5, 2010.

Barbara J. Schrage,

Managing Director, American Institute in Taiwan.

Dated: August 13, 2010.

Michael L. White,

Acting Director of the Federal Register.

AIT-TECRO AGREEMENTS

In Force as of December 31, 2009

STATUS OF TECRO

The Exchange of Letters concerning the change in the name of the Coordination Council for North American Affairs (CCNAA) to the Taipei Economic and Cultural Representative Office in the United States (TECRO). Signed December 27, 1994 and January 3, 1995. Entered into force January 3, 1995.

AGRICULTURE

1. Guidelines for a cooperative program in the agriculture sciences. Signed January 28, 1986. Entered into force January 28, 1986.

2. Amendment amending the 1986 guidelines for a cooperative program in the agricultural sciences. Effected by exchange of letters September 11, 1989. Entered into force September 11, 1989.

3. Cooperative service agreement to facilitate fruit and vegetable inspection through their designated representatives, the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Taiwan Provincial Fruit Marketing Cooperative (TPFMC) supervised by the Taiwan Council of Agriculture (COA). Signed April 28, 1993. Entered into force April 28, 1993.

4. Memorandum of agreement concerning sanitary/phytosanitary and agricultural standards. Signed November 4, 1993. Entered into force November 4, 1993.

5. Agreement amending the guidelines for the cooperative program in agricultural sciences. Signed October 30, 2001. Entered into force October 30, 2001.

6. Memorandum of Understanding Establishing Consultative Committee on Agriculture Terms of Reference. Signed July 10, 2007. Entered into force July 10, 2007.

7. Consultative Committee on Agriculture Terms of Reference. Signed July 10, 2007. Entered into force July 10, 2007.

8. Notification on Protocol of Bovine Spongiform Encephalopathy (BSE)—related measures for the importation of beef and beef products for human consumption from territory of the authorities represented by AIT. Signed October 22, 2009. Entered into force October 22, 2009.

AVIATION

1. Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation (NAT–I–845), with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.

2. Amendment amending the memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981. Signed September 1 and 23, 1985. Entered into force September 3, 1985.

3. Agreement amending the memorandum of agreement of September 24 and October 23, 1981, concerning aeronautical equipment and services. Signed September 23 and October 17, 1991. Entered into force October 17, 1991.

4. Air transport agreement, with annexes. Signed at Washington March 18, 1998. Entered into force March 18, 1998.

5. Agreement for promotion of aviation safety. Signed June 30, 2003. Entered into force June 30, 2003.

6. Exchange of Letters concerning removal from the agreement of provisions relating to regulations of computer reservation systems in Annex III to the Air Transport Agreement signed March 18, 1998. Signed December 11, 2006 and January 2, 2007. Entered into force January 2, 2007.

7. Exchange of Letters on Principles for Cooperation on Improving Travel Security. Signed December 19, 2008. Enter into force December 19, 2008.

CONSERVATION

1. Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.

2. Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington October 5, 1992. Entered into force October 5, 1992.

3. Agreement on technical cooperation in forest management and nature conservation. Signed October 24, 2003 and February 27, 2004. Entered into force February 27, 2004.

4. Memorandum of Understanding Concerning Cooperation in Fisheries and Aquaculture. Signed April 21, 2008. Entered into force April 21, 2008

CONSULAR

1. Agreement regarding passport validity. Effected by exchange of letters of August 26 and November 13, 1998. Entered into force December 10, 1998.

CONSUMER PRODUCT SAFETY

1. Memorandum of Understanding for cooperation associated with consumer product safety matters. Signed April 29 and July 27, 2004. Entered into force July 27, 2004.

CUSTOMS

1. Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.

2. Agreement on TECRO/AIT carnet for the temporary admission of goods. Signed June 25, 1996. Entered into force June 25, 1996.

3. Agreement regarding mutual assistance between their designated representatives, the United States Customs Administration and the Taiwan Customs Administration. Signed January 17, 2001. Entered into force January 17, 2001.

DRUG ENFORCEMENT

1. Memorandum of Understanding Concerning the Sharing of Information in Relation to Preventing Combating Breach of Customs and Controlled Substances Laws. Signed February 10, 2009. Entered into force February 10, 2009.

EDUCATION AND CULTURE

1. Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei April 14 and June 4, 1979. Entered into force June 4, 1979.

2. Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983. Entered into force February 3, 1983.

3. Memorandum of Understanding on Educational Cooperation. Signed at Washington DC December 5, 2008. Entered into force December 5, 2008.

ENERGY

1. Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.

2. Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.

3. Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University. Signed November 28, 1990.

4. Agreement Amending and Extending the Agreement of October 3, 1984, as amended and extended, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 3, 1994. Entered into force October 3, 1994.

5. Agreement concerning safeguards arrangements for nuclear materials transferred from France to Taiwan. Effected by exchange of letters February 12 and May 13, 1993. Entered into force May 13, 1993.

6. Memorandum of Agreement for release of an Energy and Power Evaluation Program (ENPEP) computer software package. Signed January 25 and February 27, 1995. Entered into force February 27, 1995.

7. Agreement regarding terms and conditions for the acceptance of foreign research reactor spent nuclear fuel at the Department of Energy's Savannah River site. Signed December 28, 1998 and February 25, 1999. Entered into force February 25, 1999.

8. Agreement in the area of probabilistic risk assessment research. Signed July 20 and December 27. Entered into force January 1, 1999.

9. Agreement for technical cooperation in clean coal and advanced power systems technologies. Signed October 31, 2003 and January 20, 2004. Entered into force January 20, 2004.

10. Agreement in the area of probabilistic risk assessment research. Signed October 18 and December 29, 2004. Entered into force December 29, 2004, effective January 1, 2004

11. Agreement relating to participation in the USNRC program of thermal-hydraulic code applications and maintenance research. Signed December 13, 2004 and December 13, 2004. Entered into force December 13, 2004.

12. Joint determination of safeguard ability for alteration in form or content of irradiated fuel elements pursuant to article VIII.C of the

agreement for cooperation concerning civil uses of atomic energy signed April 4, 1972. Signed May 17, 2006 and May 17, 2006. Entered into force May 17, 2006.

13. Modification Number 1 to the Agreement for the Shipment of Spent Nuclear Fuel. Signed July 8, 2009. Entered into force July 8, 2009.

ENVIRONMENT

1. Agreement for technical cooperation in the field of environmental protection, with implementing arrangement. Signed June 21, 1993. Entered into force June 21, 1993.

2. Agreement extending the agreement of June 21, 1993 for technical cooperation in the field of environmental protection. Effected by exchanges of letters June 30 and July 20 and 30, 1998. Entered into force July 30, 1998, effective June 21, 1998.

3. Agreement extending the agreement for technical cooperation in the field of environmental protection. Signed September 23, 2003. Entered into force September 23, 2003.

4. Extension of Agreement for the Technical Cooperation in the Field of Environmental Protection. Signed September 29, 2008. Entered into force September 29, 2008.

HEALTH

1. Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.

2. Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.

3. Agreement amending the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.

4. Agreement amending the 1984 guidelines for a cooperative program in the biomedical Sciences, as amended, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.

5. Guidelines for a cooperative program in public health and preventive medicine. Signed at Arlington and Washington June 30 and July 19, 1994. Entered into force July 19, 1994.

6. Agreement for technical cooperation in vaccine and immunization-related activities, with implementing arrangement. Signed at Washington October 6 and 7, 1994. Entered into force October 7, 1994.

7. Agreement regarding the mutual exchange of information on medical devices, including quality systems requirements inspectional information. Effected by exchange of letters January 9, 1998. Entered into force January 9, 1998.

HOMELAND SECURITY

1. Declaration of Principles for governing cooperation, on the basis of reciprocity, including the posting of AIT Representatives at the Port of Kaohsiung, and the posting of TECRO Representatives at certain U.S. seaports. Signed August 18, 2004 and August 18, 2004. Entered into force August 18, 2004.

2. Memorandum of understanding concerning cooperation to prevent the illicit trafficking in nuclear and other radioactive material. Signed May 25, 2006 and May 25, 2006. Entered into force May 25, 2006.

3. Declaration of Principles for governing cooperation, on the basis of reciprocity, including the posting of AIT Representatives at seaports in Taiwan. Signed September 22, 2006 and September 22, 2006. Entered into force September 22, 2006.

4. Exchange of Letters to facilitate the implementation of the MOU concerning cooperation to prevent the illicit trafficking in nuclear and other radioactive material signed May 25, 2006. Signed April 30, 2007 and July 5, 2007. Entered into force July 5, 2007.

5. Port Air Quality Partnership Declaration on the occasion of a Port Air Quality Partnership Conference hosted by their designated representatives, the Port of Tacoma, Washington and the Harbor Bureaus of Kaosiung, Taipei and Keelung on November 18–20, 2008. Signed November 20, 2008. Enter into force November 20, 2008.

6. Agreement for Transfer of Ownership. Signed September 30, 2009. Entered into force September 30, 2009.

INTELLECTUAL PROPERTY

1. Agreement concerning the protection and enforcement of rights in audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and 27, 1989. Entered into force June 27, 1989.

2. Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.

3. Agreement for the protection of copyrights, with appendix. Signed July 16, 1993. Entered into force July 16, 1993.

4. Memorandum of understanding regarding the extension of priority filing rights for patent and trademark applications. Signed April 10, 1996. Entered into force April 10, 1996.

JUDICIAL ASSISTANCE

1. Memorandum of understanding on cooperation in the field of criminal investigations and prosecutions. Signed at Taipei October 5, 1992. Entered into force October 5, 1992.

2. Agreement on mutual legal assistance in criminal matters. Signed March 26, 2002. Entered into force March 26, 2002.

LABOR

1. Guidelines for a cooperative program in labor affairs. Signed December 6, 1991. Entered into force December 6, 1991.

MAPPING

1. Agreement concerning mapping, charting, and geodesy cooperation. Signed November 28, 1995. Entered into force November 28, 1995.

2. Amendment one to the Agreement concerning mapping, charting, and geodesy cooperation. Signed December 1, 2009. Entered into force December 1, 2009.

MARITIME

1. Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and September 7, 1982. Entered into force September 7, 1982.

2. Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.

3. Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

4. Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships, 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

5. Agreement concerning mutual implementation of the 1966 international convention on load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985. Entered into force April 10, 1985.

6. Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

MILITARY

1. Agreement for foreign military sales financing by the authorities on Taiwan. Signed January 4 and July 12, 1999. Entered into force July 12, 1999.

2. Letter of Agreement concerning exchange of research and development information. Signed August 4, 2004. Entered into force August 4, 2004.

3. Master Information Exchange Agreement Information Exchange Annex AF–05–TW–9301 Concerning Nanoscience and Nanotechnology. Signed December 15, 2005. Entered into force December 15, 2005.

4. Information and communication technologies (ICT) forum terms of reference. Signed October 31, 2007. Entered into force October 31, 2007.

5. Memorandum of Agreement Concerning Research, Development, Test and Evaluation (RDT&E) Projects. Signed May 14, 2008. Entered into force May 14, 2008.

6. Arrangement Concerning the Exchange of Aeronautical Information. Signed January 27, 2009. Entered into force January 27, 2009

POSTAL

1. Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19 and November 26, 1990. Entered into force November 26, 1990.

2. International business reply service agreement, with detailed regulations. Signed at Washington February 7, 1992. Entered into force February 7, 1992.

3. Agreement on the application of an EMS (express mail service) pay-for-performance plan. Signed March 5, 2004 and August 25, 2004. Entered into force January 1, 2005.

PRIVILEGES AND IMMUNITIES

1. Agreement on privileges, exemptions and immunities, with addendum. Signed at Washington October 2, Entered into force October 2, 1980.

2. Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

SCIENTIFIC & TECHNICAL COOPERATION

1. Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

2. Agreement concerning renewal and extension of the 1980 agreement on scientific cooperation. Signed March 10, 1987. Entered into force March 10, 1987.

3. Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

4. Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

5. Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

6. Agreement extending the agreement of November 17, 1987, for a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed August 8, 1990. Entered into force August 8, 1990.

7. Cooperative program on Hualien soil-structure interaction experiment. Signed September 28, 1990. Entered into force September 28, 1990.

8. Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

9. Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction. *Name changed to Agreement for Technical Assistance in Areas of Water Resource Development. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

10. Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

11. Agreement amending the Agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed August 30 and September 3, 1996. Entered into force September 3, 1996.

12. Agreement concerning joint studies on reservoir sedimentation and sluicing, including computer modeling. Signed February 14 and March 8, 1996. Entered into force March 8, 1996.

13. Guidelines for a cooperative program in physical sciences. Signed January 2 and 10, 1997. Entered into force January 10, 1997.

14. Agreement for scientific and technical cooperation in ocean climate research. Signed February 18, 1997. Entered into force February 18, 1997.

15. Agreement amending the agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed October 14, 1997. Entered into force October 14, 1997.

16. Agreement for technical cooperation in scientific and weather technology systems support. Signed October 22 and November 5, 1997. Entered into force November 5, 1997.

17. Agreement for technical cooperation associated with establishment of advanced operational aviation weather systems. Signed February 10 and 13, 1998. Entered into force February 13, 1998.

18. Agreement for technical cooperation associated with development, launch and operation of a constellation observing system for meteorology, ionosphere and climate. Signed May 29 and June 30, 1999. Entered into force June 30, 1999.

19. Agreement for technical cooperation associated with establishment of advanced data assimilation and modeling systems. Signed December 20, 2004 and January 12, 2005. Entered into force January 12, 2005.

20. Agreement for cooperation in the micro pulse lidar network and the aerosol robotic network. Signed July 13, 2007 and April 17, 2007. Entered into force July 13, 2007.

21. Agreement for technical cooperation in meteorology and forecast systems development. Signed September 5, 2007 and June 25, 2007. Entered into force September 5, 2007.

22. Agreement for Cooperation in Astronomy and Astrophysics Research. Signed October 27, 2008. Entered into force October 27, 2008.

SECURITY OF INFORMATION

1. Protection of information agreement. Signed September 15, 1981. Entered into force September 15, 1981.

TAXATION

1. Agreement concerning the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

2. Agreement for technical assistance in tax administration, with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

TRADE

1. Agreement concerning trade matters, with annexes. Effected by exchange of letters at Arlington and Washington October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980.

2. Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington December 31, 1981. Entered into force December 31, 1981.

3. Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

4. Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington October 9, 1986. Entered into force October 9, 1986.

5. Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entered into force December 12, 1986, effective January 1, 1987.

6. Agreement implementing the agreement of December 12, 1986 concerning beer, wine and cigarettes. Effected by exchange of letters at Taipei April 29, 1987. Entered into force April 29, 1987, effective January 1, 1987.

7. Agreement concerning trade in whole turkeys, turkey parts, processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington March 16, 1989. Entered into force March 16, 1989.

8. Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

9. Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

10. Agreement regarding new requirements for health warning legends on cigarettes sold in the territory represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

11. Memorandum of understanding concerning a new quota arrangement for cotton and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

12. Memorandum of understanding on the exchange of information concerning commodity futures and options matters, with appendix. Signed January 11, 1993. Entered into force January 11, 1993.

13. Agreement concerning a framework of principles and procedures for consultations regarding trade and investment, with annex. Signed at Washington September 19, 1994. Entered into force September 19, 1994.

14. Visa arrangement concerning textiles and textile products. Effected by exchange of letters of April 30 and September 3 and 23, 1997. Entered into force September 23, 1997.

15. Agreement concerning trade in cotton, wool, man-made fiber, silk blend and other non-cotton vegetable fiber textile products, with attachment. Effected by exchange of letters December 10, 1997. Entered into force December 10, 1997, effective January 1, 1998.

16. Agreed minutes on government procurement issues. Signed December 17, 1997. Entered into force December 17, 1997.

17. Understanding concerning bilateral negotiations on the WTO accession of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and the United States. Signed February 20, 1998. Entered into force February 20, 1998.

18. Agreement on mutual recognition for equipment subject to electro-magnetic compatibility (EMC) regulations. Signed March 16, 1999. Entered into force March 16, 1999.

19. Agreement concerning the Asia Pacific Economic Cooperation mutual recognition

arrangement for conformity assessment of telecommunications equipment (APEC Telecon MRA). Signed March 16, 1999. Entered into force March 16, 1999.

20. Memorandum of understanding on the extension of trade in textile and apparel products. Signed February 9, 2001. Entered into force February 9, 2001.

[FR Doc. 2010–20676 Filed 8–18–10; 8:45 am]

BILLING CODE 4710–49–P

NATIONAL SCIENCE FOUNDATION

National Science Board: Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Wednesday, August 25, 2010, at 7:30 a.m.; and Thursday, August 26, 2010 at 7:30 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Rooms 1235 and 1295, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 or e-mail *NationalScienceBrd@nsf.gov* and leave your name and place of business to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.

STATUS: Some portions open, some portions closed.

Open Sessions

August 25, 2010

7:30 a.m.–7:35 a.m.
7:35 a.m.–9 a.m.
7:35 a.m.–9:30 a.m.
9 a.m.–12 p.m.
1 p.m.–1:30 p.m.
2:30 p.m.–3:30 p.m.
4 p.m.–6:15 p.m.

August 26, 2010

7:30 a.m.–9:05 a.m.
7:30 a.m.–8:45 a.m.
9:30 a.m.–10:45 a.m.
10:45 a.m.–11:30 a.m.
11:30 a.m.–12 p.m.
1:20 p.m.–3 p.m.

Closed Sessions

August 25, 2010

1:30 p.m.–2:30 p.m.
3:30 p.m.–4 p.m.

August 26, 2010

9:05 a.m.–9:30 a.m.
1 p.m.–1:20 p.m.

UPDATES: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

MATTERS TO BE DISCUSSED:

Wednesday, August 25, 2010

Chairman's Introduction

Open Session: 7:30 a.m.–7:35 a.m., Room 1235

Committee on Programs and Plans (CPP)

Open Session: 7:35 a.m.–12 p.m., Room 1235

- Chairman's Remarks.
- Approval of Minutes.
  - ○ February 3, 2010 CPP–CSB Joint Session Minutes.
  - ○ May 5, 2010 CPP Minutes.
- Subcommittee on Polar Issues (SOPI)
  - ○ SOPI Chairman's Remarks.
  - ○ U.S. Antarctic Program Review.
  - ■ Polar Research Vessel Support.
  - ○ OPP Director's Report.
- Committee Chairman's Remarks.
  - ○ Reference Written Information Items.
  - ■ *NSB Information Item:* NSF Director's Determination of Satisfactory Progress in the Management of the National Radio Astronomy Observatory by Associated Universities, Inc.
  - ■ *NSB Information Item:* Update on DataNet Awards to Johns Hopkins University and the University of New Mexico.
  - ■ *NSB Information Item:* High Performance Computing Update: National Institute for Computational Sciences, University of Tennessee, Knoxville.
  - ■ *NSB Information Item:* Update on Implementation of NSF's Revised Cost Sharing Policy in Response to the 2nd NSB Cost Sharing Report.
  - ○ Other Items:
  - ■ Status of DataNet Awards.
- *Discussion Item:* Review of NSB Policy on Threshold for Awards Requiring NSB Approval.
- *NSB Discussion and Information Items:* NSB Recompetition Policy Implementation.
  - ○ *NSB Discussion Item:* Report on Recompetition Policy Implementation.
  - ○ *NSB Information Item:* Plan for Terminal Award to Michigan State University for Support of the Operations of the National Superconducting Cyclotron Laboratory (NSCL).
  - ○ *NSB Information Item:* Plan to Recompete the Management of the National High Magnetic Field Laboratory (NHMFL).
  - ○ NSB Discussion.
- *NSB Discussion Item:* Strategic Planning for Cyberinfrastructure.
- *NSB Information Item:* LIGO: Possible Additional AdvLIGO Site.
- *NSB Information Item:* Gemini Extension of Cooperative Agreement.
- *NSB Information Item:* Renewal of Science of Learning Centers.
- *NSB Information Item:* Arctic Logistics Contract.

Open Session: 1 p.m.–1:30 p.m., Room 1235

- Task Force on Support of Mid-Scale and Multi-Investigator Research (MS)
  - ○ Task Force Chairman's Remarks.
  - ○ Discussion and Approval of Charge.
  - ○ Discussion of Information Gathering.

Closed Session: 1:30 p.m.–2:30 p.m., Room 1235

- Committee Chairman's Remarks.
- *NSB Information Item:* Update on High Performance Computing Awards.
- *NSB Information Item:* Update on DUSEL.

Committee on Strategy and Budget (CSB)

Open Session: 7:35 a.m.–9:30 a.m., Room 1295

- Task Force on Data Policies
  - ○ Task Force on Data Policies Chairman's Remarks.
  - ○ Update from NSF on its policy and implementation.
  - ○ Review, Discussion and Approval of Charge and Work Plan from May 5, 2010 Meeting.
  - ○ Discussion of Statement of Principles.
  - ○ Discussion of Workshop, to be held in Winter 2011.
  - ○ Closing Remarks.

Committee on Audit and Oversight (A&O)

Open Session: 2:30 p.m.–3:30 p.m., Room 1235

- Approval of Minutes, May 4, 2010 Meeting and August 20, 2010 Closed Teleconference.
- Committee Chairman's Opening Remarks.
- Human Resources Update.
- Chief Financial Officer's Update.
- Inspector General's Update.
- Future NSF Update.
- Review of NSB Policy on Award Threshold Requiring NSB Approval.
- Committee Chairman's Closing Remarks.

Closed Session 3:30 p.m.–4 p.m., Room 1235

- Committee Chair's Opening Remarks.
- Procurement Activities.

Committee on Science and Engineering Indicators (SEI)

Open Session: 4 p.m.–6:15 p.m., Room 1235

- Approval of May Minutes.
- Chairman's Remarks.
- Overview of the Process for Producing *Science and Engineering Indicators 2012* and the Committee's Role.
- Key Board Dates and Activities for Production of *Science and Engineering Indicators 2012.*
- Introduction of Chapter Authors and Discussion of *Science and Engineering Indicators 2012* Narrative Chapter Outlines.
- Indicators Education Tool.
- Indicators-related Products.
- Chairman's summary.

Thursday, August 26, 2010

Committee on Strategy and Budget (CSB)

Open Session: 7:30 a.m.–9:05 a.m., Room 1235

- Subcommittee on Facilities (SCF).
  - Approval of SCF Meeting Minutes, June 29, 2010.
  - SCF Chairman's Remarks.
  - Discussion on the Outcome of June 29, 2010 Meeting with NSF Assistant Directors and Other NSF Staff.
  - Status Report: Principles for Research Infrastructure.
  - Next Steps.
- Approval of the Minutes of the May 2010 Meeting.
- Approval of Minutes of the August 20, 2010 CSB Teleconference.
- Committee Chairman's Remarks.
- NSF Strategic Plan.
- NSB Budget.
- Closing Remarks.

Closed Session: 9:05 a.m.–9:30 a.m., Room 1235

- NSF FY 2012 Budget.

Task Force on Merit Review (MR)

Open Session: 7:30 a.m.–8:45 a.m., Room 1295

- Approval of Minutes from May 5, 2010 Meeting.
- Approval of Minutes from July 28, 2010 Teleconference.
- Task Force Chairman's Remarks.
- Discussion of Status of Data-Gathering Activities.
  - COV Report Text-Mining.
  - Design of Research Questions for External Input.
  - SBE/CISE Text-Mining Projects.
  - Using a Blog for Informal Input.

Committee on Education and Human Resources (CEH)

Open Session: 9:30 a.m.–10:45 a.m., Room 1235

- Approval of May 2010 Minutes.
- Next Generation of STEM Innovators Report—Public Release and Post-Release Plans.
- NSF Education Research Agenda.
  - Decadal Study Update.
  - Education and Human Resources (EHR) Research Vision.
- Other Committee Business.

Committee on Science and Engineering Indicators (SEI)

Open Session: 10:45 a.m.–11:30 a.m., Room 1235

- Key Board Dates and Activities for Production of *Science and Engineering Indicators 2012.*
- Introduction of Chapter Authors and Discussion of *Science and Engineering Indicators 2012.* Narrative Chapter Outlines.
- Indicators Education Tool.
- Indicators-related Products.
- Chairman's summary.

Plenary Open

Open Session: 11:30 a.m.–12 p.m., Room 1235

- Presentation by 60th Anniversary Distinguished Speaker, Luis von Ahn.

Plenary Closed

Closed Session: 1 p.m.–1:20 p.m., Room 1235

- Approval of Closed Session Minutes, May 2010.
- Closed Committee Reports.

Plenary Open

Open Session: 1:20 p.m.–3 p.m., Room 1235

- Director's Award for Collaborative Integration.
- Demonstration of Science, Engineering, and Education (SEE) Innovation Web Site.
- Presentation on STAR METRICS.
- Approval of Open Session Minutes, May 2010.
- Chairman's Report.
- Director's Report.
- Open Committee Reports.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–20660 Filed 8–17–10; 11:15 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–91; CP2010–92; CP2010–93; CP2010–94; Order No. 513]

Before Commissioners: Ruth Y. Goldway, Chairman; Tony L. Hammond, Vice Chairman; Mark Acton; Dan G. Blair; and Nanci E. Langley; Competitive Product Prices; Global Expedited Package Services 3 (MC2010–28); Negotiated Service Agreement; Notice and Order Concerning Filing of Four Additional Global Expedited Package Services 3 Negotiated Service Agreements

Issued August 11, 2010.

I. Introduction

On August 9, 2010, the Postal Service filed a notice announcing that it has entered into four additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1–2, Attachment 3. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the

[1] Notice of United States Postal Service of Filing Four Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, August 9, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachments 1A, 1B, 1C and 1D—redacted copies of the four contracts and applicable annexes;
- Attachments 2A, 2B, 2C and 2D—a certified statement required by 39 CFR 3015.5(c)(2) for each of the four contracts;
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and
- Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for GEPS. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement all of which are highlighted in the Notice. *Id.* at 5. These modifications as described in the Postal Service's Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to the baseline contract for GEPS 3 and share the same cost and market characteristics as the previously filed GEPS contracts. *Id.* at 4. It states that the differences including updates and volume or postage commitments of customers, do not alter the contracts' functional equivalency. *Id.* The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these four GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.*

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contracts be included within the GEPS 3 product. *Id.* at 6.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–91 through CP2010–94 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this Order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than August 18, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. CP2010–91 through CP2010–94 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than August 18, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2010–20515 Filed 8–18–10; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12268 and #12269]

Texas Disaster Number TX–00362

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–1931–DR), dated 08/03/2010 .

Incident: Hurricane Alex.

Incident Period: 06/30/2010 and continuing.

DATES: *Effective Date:* 08/13/2010.

Physical Loan Application Deadline Date: 10/04/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/03/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 08/03/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Floyd, Foard, Garza, Lamb, Lubbock, Lynn, Motley, Terry, Cottle.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–20617 Filed 8–18–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12272 and #12273]

Kansas Disaster # KS–00045

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA—1932—DR), dated 08/10/2010.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/07/2010 through 07/21/2010.

DATES: *Effective Date:* 08/10/2010.

Physical Loan Application Deadline Date: 10/12/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/10/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/10/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Atchison, Brown, Butler, Chase, Clay, Cloud, Comanche, Doniphan, Ellis, Franklin, Greenwood, Harvey, Jewell, Kiowa, Lyon, Marion, Marshall, Miami, Mitchell, Morris, Norton, Osage, Osborne, Pawnee, Phillips, Pottawatomie, Republic, Riley, Rooks, Rush, Smith, Wabaunsee, Washington, Woodson.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12272B and for economic injury is 12273B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–20620 Filed 8–18–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12270 and #12271]

Puerto Rico Disaster # PR–00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of PUERTO RICO dated 08/11/2010.

Incident: Severe Rains and Flooding.

Incident Period: 07/19/2010 through 07/23/2010.

DATES: *Effective Date:* 08/11/2010.

Physical Loan Application Deadline Date: 10/12/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/11/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities: Ceiba, Fajardo, Las Piedras.

Contiguous Municipalities:

Puerto Rico: Canovanas, Humacao, Juncos, Luquillo, Naguabo, Rio Grande, San Lorenzo, Yabucoa.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12270 6 and for economic injury is 12271 0.

The Commonwealth which received an EIDL Declaration # is Puerto Rico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

August 11, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–20624 Filed 8–18–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12274 and #12275]

Wisconsin Disaster # WI–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Wisconsin (FEMA—1933—DR), dated 08/11/2010.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 07/20/2010 through 07/24/2010.

Effective Date: 08/11/2010.

Physical Loan Application Deadline Date: 10/12/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/11/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/11/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Grant, Milwaukee.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12274B and for economic injury is 12275B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–20622 Filed 8–18–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62716; File No. 10–198]

In the Matter of the Application of BATS Y-Exchange, Inc. for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission

August 13, 2010.

I. Introduction

On October 20, 2009, BATS Y-Exchange, Inc. ("BATS Y Exchange" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") a Form 1 application ("Form 1") under the Securities Exchange Act of 1934 ("Act"), seeking registration as a national securities exchange pursuant to Section 6 of the Act.[1] Notice of the application was published for comment in the **Federal Register** on January 28, 2010.[2] The Commission received no comments regarding the BATS Y Exchange Form 1. On July 1, 2010, BATS Y Exchange submitted Amendment No. 1 to its Form 1.[3]

II. Statutory Standards

Under Sections 6(b) and 19(a) of the Act,[4] the Commission shall by order grant a registration as a national securities exchange if it finds that the exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that BATS Y Exchange's application for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of BATS Y Exchange are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) Assure fair representation of an exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (3) protect investors and the public interest. The Commission also believes that the rules of BATS Y Exchange are consistent with Section 11A of the Act.[5] Finally, the Commission finds that the proposed rules of BATS Y Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[6]

III. Discussion

A. Corporate Structure

BATS Y Exchange has applied to the Commission to register as a national securities exchange. BATS Global Markets, Inc. ("BATS Global Markets"), a Delaware corporation, will wholly own BATS Y Exchange as well as (1) BATS Exchange, a registered national securities exchange, and (2) BATS Trading, Inc. ("BATS Trading"), a registered broker-dealer that currently provides order routing services to BATS Exchange, and would provide such services to BATS Y Exchange.

1. Self-Regulatory Function of BATS Y Exchange; Relationship Between BATS Global Markets, Inc. and BATS Y Exchange; Jurisdiction Over BATS Global Markets, Inc.

Although BATS Global Markets will not itself carry out regulatory functions, its activities with respect to the operation of BATS Y Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. The proposed BATS Global Markets corporate documents include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory function from BATS Global Markets, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act.[7]

For example, BATS Global Markets submits to the Commission's jurisdiction with respect to activities relating to BATS Y Exchange,[8] and agrees to provide the Commission and BATS Y Exchange with access to its books and records that are related to the operation or administration of BATS Y Exchange.[9] In addition, to the extent they are related to the operation or administration of BATS Y Exchange, the books, records, premises, officers, directors, agents, and employees of BATS Global Markets shall be deemed the books, records, premises, officers, directors, agents, and employees of BATS Y Exchange for purposes of, and subject to oversight pursuant to, the Act.[10] BATS Global Markets also agrees to keep confidential non-public information relating to the self-

[1] 15 U.S.C. 78f.

[2] *See* Securities Exchange Act Release No. 61400 (January 22, 2010), 75 FR 4595 ("Notice").

[3] In Amendment No. 1, the Exchange modified its application by amending or adding the following rules to align the proposed rules of BATS Y Exchange with the rules of BATS Exchange, Inc. ("BATS Exchange") as of the date of the Amendment, due to changes to BATS Exchange rules filed with and approved by the Commission or filed as immediately effective, as applicable, since the Form 1 was filed: Table of Contents; Rule 1.6 (Procedures for Exemptions); Rule 2.5 Interpretation and Policy .02 (Continuing Education Requirements); Rule 2.5 Interpretation and Policy .03 (Registration Procedures); Rule 2.5 Interpretation and Policy .04 (Termination of Employment); Rule 2.6(g) (Application Procedures for Membership or to become an Associated person of a Member); Rule 2.13 (Fidelity Bonds); Rule 3.22 (Gratuities); Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information); Rule 11.9(c)(12) (Destination Specific Order); and Rule 12.13 (Trading Ahead of Research Reports). In addition, the Exchange modified certain Exhibits to the Form 1 to: (1) Reflect minor changes to certain corporate documents; (2) update the Exchange's proposed User's manual and certain administrative documents; (3) include a representation that the Exchange's parent corporation will make a capital contribution into the Exchange's capital account and provide adequate funding of Exchange operations; (4) update the list of anticipated Exchange officers; (5) indicate that the Exchange has executed a regulatory services agreement with the Financial Industry Regulatory Authority ("FINRA") to conduct various regulatory services on behalf of the Exchange; and (6) indicate that the Exchange intends to file with the Commission a plan setting forth the allocation of certain regulatory responsibilities between itself and FINRA pursuant to Rule 17d–2 of the Act for Members of the Exchange that are also members of FINRA. The changes proposed in Amendment No. 1 either are not material or are otherwise responsive to the concerns of Commission staff.

[4] 15 U.S.C. 78f(b) and 78s(a).

[5] 15 U.S.C. 78k–1.

[6] 15 U.S.C. 78f(b)(8).

[7] *See* BATS Global Markets proposed Amended and Restated By-Laws Article XII and Article XIV, Sections 14.01, 14.02, 14.03, 14.04, 14.05, and 14.06.

[8] *See* BATS Global Markets proposed Amended and Restated By-Laws Article XIV, Section 14.05.

[9] *See* BATS Global Markets proposed Amended and Restated By-Laws Article XIV, Section 14.03.

[10] *Id.*

regulatory function [11] of BATS Y Exchange and not to use such information for any non-regulatory purpose.[12] In addition, the board of directors of BATS Global Markets, as well as its officers, employees, and agents, are required to give due regard to the preservation of the independence of the Exchange's self-regulatory function.[13] Further, BATS Global Markets By-Laws require that any changes to the BATS Global Markets Certificate of Incorporation and By-Laws be submitted to the Board of Directors of the Exchange ("Exchange Board"), and, if such amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, such change shall not be effective until filed with, or filed with and approved by, the Commission.[14] The Commission finds that these provisions are consistent with the Act, and that they will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

The Commission also believes that under Section 20(a) of the Act [15] any person with a controlling interest in BATS Y Exchange would be jointly and severally liable with and to the same extent that BATS Y Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act [16] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act [17] authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to BATS Global Markets' dealings with BATS Y Exchange.

2. Ownership and Voting Limitations; Changes in Control of BATS Y Exchange

The BATS Global Markets proposed Amended and Restated Certificate of Incorporation includes restrictions on the ability to own and vote shares of capital stock of BATS Global Markets.[18] These limitations are designed to prevent any shareholder from exercising undue control over the operation of BATS Y Exchange and to assure that the Exchange and the Commission are able to carry out their regulatory obligations under the Act.

Generally, no person, either alone or together with its related persons,[19] may beneficially own more than forty percent of any class of capital stock of BATS Global Markets.[20] The BATS Global Markets proposed Amended and Restated Certificate of Incorporation prohibits BATS Y Exchange members, either alone or together with their related persons, from beneficially owning more than twenty percent of shares of any class of capital stock of BATS Global Markets.[21] If any stockholder violates these ownership limits, BATS Global Markets will redeem the shares in excess of the applicable ownership limit for their fair market value.[22] In addition, no person, alone or together with its related persons, may vote or cause the voting of more than twenty percent of the voting power of the then issued and outstanding capital stock of BATS Global Markets.[23] If any stockholder purports to vote, or cause the voting of, shares that would violate this voting limit, BATS Global Markets will not honor such vote in excess of the voting limit.[24]

The BATS Global Markets Board may waive the forty percent ownership limitation applicable to non-BATS Y Exchange member stockholders and the twenty percent voting limitation, pursuant to a resolution duly adopted by the Board of Directors, if it makes certain findings. Any such waiver would not be effective until approved by the Commission pursuant to Section 19 of the Act.[25] However, as long as BATS Global Markets directly or indirectly controls BATS Y Exchange, the BATS Global Markets Board cannot waive the voting and ownership limits above twenty percent for BATS Y Exchange members and their related persons.[26]

Members that trade on an exchange traditionally have ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[27] A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

In addition, as proposed, BATS Y Exchange will be a wholly-owned subsidiary of BATS Global Markets. The BATS Y Exchange proposed Amended and Restated By-Laws identifies this ownership structure.[28] Any changes to

[11] This requirement to keep confidential non-public information relating to the self-regulatory function shall not limit the Commission's ability to access and examine such information or limit the ability of directors, officers, or employees of BATS Global Markets to disclose such information to the Commission. *See* BATS Global Markets proposed Amended and Restated By-Laws Article XIV, Section 14.02.

[12] *See* BATS Global Markets proposed Amended and Restated By-Laws Article XIV, Section 14.02.

[13] *See* BATS Global Markets proposed Amended and Restated By-Laws Article XIV, Section 14.01.

[14] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation TWELFTH and BATS Global Markets proposed Amended and Restated By-Laws Article XII.

[15] 15 U.S.C. 78t(a).

[16] 15 U.S.C. 78t(e).

[17] 15 U.S.C. 78u–3.

[18] These provisions are generally consistent with ownership and voting limits approved by the Commission for other SROs. *See e.g.,* Securities Exchange Act Release Nos. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.) ("EDGX and EDGA Exchange Order"); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.) ("BATS Exchange Order"); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR–NSX–2006–03) ("NSX Demutualization Order"); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (File No. SR–CHX–2004–26) ("CHX Demutualization Order"); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (File No. SR–Phlx–2003–73) ("Phlx Demutualization Order").

[19] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation FIFTH (a)(ii).

[20] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation FIFTH (b)(i)(A).

[21] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation FIFTH (b)(i)(B).

[22] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation FIFTH (e).

[23] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation FIFTH (b)(i)(C).

[24] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation FIFTH (d).

[25] *See* BATS Global Markets proposed Amended and Restated Certificate of Incorporation FIFTH (b)(ii)(B).

[26] These provisions are generally consistent with waiver of ownership and voting limits approved by the Commission for other SROs. *See e.g.,* EDGX and EDGA Exchange Order, *supra* note 18; BATS Exchange Order, *supra* note 18; NSX Demutualization Order, *supra* note 18; CHX Demutualization Order, *supra* note 18; and Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08).

[27] *See, e.g.,* Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) ("Nasdaq Exchange Registration Order") and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) ("NYSE/Archipelago Merger Approval Order").

[28] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article I(cc).

the BATS Y Exchange Amended and Restated By-Laws, including any change in the provision that identifies BATS Global Markets as the sole owner, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[29] Further, pursuant to the BATS Y Exchange proposed Amended and Restated By-Laws, BATS Global Markets may not transfer or assign, in whole or in part, its ownership interest in BATS Y Exchange.[30]

The Commission believes that these provisions are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

3. BATS Y Exchange

BATS Y Exchange has applied to the Commission to register as a national securities exchange. As part of its exchange application, the Exchange has filed the BATS Y Exchange Certificate of Incorporation and the proposed Amended and Restated By-Laws of BATS Y Exchange. In these documents, among other things, BATS Y Exchange establishes the composition of the Exchange Board and the BATS Y Exchange committees.

a. The BATS Y Exchange Board of Directors

The Exchange Board will be the governing body of BATS Y Exchange and possess all of the powers necessary for the management of the business and affairs of the Exchange and the execution of its responsibilities as an SRO. Under the BATS Y Exchange proposed Amended and Restated By-Laws:

- The Exchange Board will be composed of ten directors; [31]
- One director will be the Chief Executive Officer of BATS Y Exchange; [32]
- The number of Non-Industry Directors,[33] including at least one Independent Director,[34] will equal or exceed the sum of the number of Industry Directors [35] and Member Representative Directors; [36] and
- At least twenty percent of the directors on the Exchange Board will be Member Representative Directors.[37]

BATS Global Markets will appoint the initial Exchange Board, including the Member Representative Directors, which shall serve until the first annual meeting of stockholders.[38] The first annual meeting of the stockholders will be held prior to BATS Y Exchange commencing operations as a national securities exchange.[39] At the first annual meeting of stockholders, a new Exchange Board will be elected pursuant to the BATS Y Exchange proposed Amended and Restated By-Laws. Therefore, prior to commencing operations as a national securities exchange, BATS Y Exchange Members will have the opportunity to participate in the selection of Member Representative Directors, and the Exchange Board will be in compliance with the compositional requirements contained in the BATS Y Exchange proposed Amended and Restated By-Laws.[40]

BATS Global Markets will appoint the initial Nominating Committee [41] and Member Nominating Committee,[42] consistent with each committee's compositional requirements,[43] to nominate candidates for election to the Exchange Board. Each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable. Additional candidates for the Member Nominating Committee may be nominated and elected by BATS Y Exchange Members pursuant to a petition process.[44]

The Nominating Committee will nominate candidates for each director position other than the Member Representative Directors, and BATS Global Markets, as the sole shareholder, will elect those directors. The Member Nominating Committee will nominate candidates for each Member Representative Director position on the Exchange Board.[45] Additional candidates may be nominated for the Member Representative Director positions by BATS Y Exchange Members pursuant to a petition process.[46] If no candidates are nominated pursuant to a petition process, then the initial nominees of the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee. If a petition process produces additional candidates, then the candidates nominated pursuant to a petition process, together with those nominated by the Member Nominating Committee, will be presented to BATS Y Exchange

[29] *See* 15 U.S.C. 78s.

[30] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article IV, Section 7.

[31] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 2(a).

[32] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 2(b).

[33] "Non-Industry Director" means a Director who is an Independent Director or any other individual who would not be an Industry Director. *See* BATS Y Exchange proposed Amended and Restated By-Laws Article I(v).

[34] "Independent Director" means a "Director who has no material relationship with the [Exchange], or any Exchange Member or any affiliate of any such Exchange Member; *provided,* however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the [Exchange] or its stockholder." *See* BATS Y Exchange proposed Amended and Restated By-Laws Article I(m).

[35] Generally, an "Industry Director" is, among other things, a Director that is or has been within the past three years an officer, director, employee, or owner of a broker-dealer. In addition, persons who have a consulting or employment relationship with the Exchange and its affiliates, are considered "Industry." *See* BATS Y Exchange proposed Amended and Restated By-Laws Article I(o).

[36] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 2(b)(i).

[37] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 2(b)(ii). "Member Representative Director" means a "Director who has been appointed as such to the initial Board of Directors pursuant to Article III, Section 4(g) of these By-Laws, or elected by stockholders after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these By-Laws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member." *See* BATS Y Exchange proposed Amended and Restated By-Laws Article I(s). *See also* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 4(b).

[38] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article I(s) and Article III, Section 4(g).

[39] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article IV, Section 1(b).

[40] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 2.

[41] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article VI, Section 2. The Nominating Committee will be comprised of at least three directors, and the number of Non-Industry members on the Nominating Committee must equal or exceed the number of Industry members.

[42] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article VI, Section 3. The Member Nominating Committee will be comprised of at least three directors, and each member of the Member Nominating Committee shall be a Member Representative member.

[43] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article VI, Section 1.

[44] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article VI, Section 1.

[45] The Member Nominating Committee will solicit comments from BATS Y Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director. *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 4(b).

[46] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 4(c). The petition must be signed by executive representatives of ten percent or more of the Exchange members. No Exchange member, together with its affiliates, may account for more than fifty percent of the signatures endorsing a particular candidate. *Id.*

Members for election to determine the final nomination of Member Representative Directors.[47] The candidates who receive the most votes will be nominated as Member Representative Directors by the Nominating Committee.[48] BATS Global Markets, as the sole shareholder, will elect those candidates nominated by the Nominating Committee as Member Representative Directors.[49]

The Commission believes that the requirement in the BATS Y Exchange proposed Amended and Restated By-Laws that twenty percent of the directors be Member Representative Directors and the means by which they are chosen by members provides for the fair representation of members in the selection of directors and the administration of BATS Y Exchange consistent with the requirement in Section 6(b)(3) of the Act.[50] As the Commission has previously noted, this requirement helps to ensure that members have a voice in the use of self-regulatory authority, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.[51]

The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[52] Further, public, non-industry representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of BATS Y Exchange.[53] The Commission believes that the proposed composition of the Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,[54] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.[55]

b. BATS Y Exchange Committees

In the BATS Y Exchange proposed Amended and Restated By-Laws, BATS Y Exchange has proposed to establish several committees. Specifically, BATS Y Exchange has proposed to establish the following committees that would be appointed by the Chairman of the Exchange Board, with the approval of the Exchange Board: A Compensation Committee;[56] Audit Committee;[57] Regulatory Oversight Committee;[58] Appeals Committee;[59] Executive Committee;[60] and Finance Committee.[61] In addition, BATS Y Exchange has proposed to establish a Nominating Committee[62] and a Member Nominating Committee, which would be elected on an annual basis by vote of stockholders.[63] The Commission believes that BATS Y Exchange's proposed committees should enable BATS Y Exchange to carry out its responsibilities under the Act and are consistent with the Act.

B. Regulation of BATS Y Exchange

As a prerequisite for the Commission's approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.[64] Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and the rules of the exchange.[65]

1. Membership

Membership on BATS Y Exchange will be open to any registered broker or dealer that is a member of another registered national securities exchange or association (other than or in addition to BATS Exchange), or any natural person associated with such a registered broker or dealer.[66] To remain eligible for membership in BATS Y Exchange, a BATS Y Exchange member must be a member of another SRO at all times.[67]

For a temporary 90-day period after approval of BATS Y Exchange's application, an applicant that is a current member of BATS Exchange and an active member of another SRO will be able to apply through an expedited process to become a BATS Y Exchange member by submitting a waive-in application form, including membership agreements.[68] BATS Y Exchange may request additional documentation in addition to the waive-in application form in order to determine that a waive-

[47] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 4(e) and (f). Each BATS Y Exchange Member shall have the right to cast one vote for each available Member Representative Director nomination, provided that any such vote must be cast for a person on the List of Candidates and that no BATS Y Exchange Member, together with its affiliates, may account for more than twenty percent of the votes cast for a candidate. *Id.*

[48] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 4(f).

[49] *Id.*

[50] 15 U.S.C. 78f(b)(3).

[51] *See* Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, *supra* note 27; BATS Exchange Order, *supra* note 18; and EDGX and EDGA Exchange Order, *supra* note 18.

[52] *See, e.g.,* Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

[53] *See* Nasdaq Exchange Registration Order and NYSE/Archipelago Merger Approval Order, *supra* note 27; BATS Exchange Order, *supra* note 18; and EDGX and EDGA Exchange Order, *supra* note 18.

[54] 15 U.S.C. 78f(b)(3).

[55] The number of Non-Industry Directors on the Exchange Board must equal or exceed the sum of the Industry and Member Representative Directors, and the Exchange Board must include at least one Independent Director. *See* BATS Y Exchange proposed Amended and Restated By-Laws Article III, Section 2(b)(i).

[56] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article V, Section 6(a). The Compensation Committee will be comprised of at least three people, and each voting member of the Compensation Committee shall be a Non-Industry Director. *Id.*

[57] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article V, Section 6(b). The Audit Committee will be comprised of at least three people, and a majority of the Audit Committee members shall be Non-Industry Directors and a Non-Industry Director shall serve as Chairman of the Audit Committee. *Id.*

[58] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article V, Section 6(c). The Regulatory Oversight Committee will be comprised of at least three people, and each member of the Regulatory Oversight Committee shall be a Non-Industry Director. *Id.*

[59] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article V, Section 6(d). The Appeals Committee shall consist of one Independent Director, one Industry Director, and one Member Representative Director. *Id.*

[60] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article V, Section 6(e). The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors. The percentage of Independent Directors on the Executive Committee shall be at least as great as the percentage of Independent Directors on the whole Exchange Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Exchange Board. *Id.*

[61] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article V, Section 6(f).

[62] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article VI, Section 2, and *supra* note 41.

[63] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article VI, Section 1, and *supra* note 42. Additional candidates for the Member Nominating Committee may be nominated and elected by BATS Exchange members pursuant to a petition process. *See supra* note 46 and accompanying text.

[64] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[65] *Id. See also* Section 19(g) of the Act, 15 U.S.C. 78s(g).

[66] *See* BATS Y Exchange Rules 2.3 and 2.5(a)(4). BATS Y Exchange will only have one class of membership, with all members enjoying the same rights and privileges on the Exchange. Although BATS Y Exchange will permit members to register as Exchange Market Makers, such Market Makers will not receive special privileges or rights vis-à-vis other members.

[67] *Id.*

[68] *See* BATS Y Exchange Rule 2.4.

in applicant meets BATS Y Exchange's qualification standards.[69]

All other applicants (and after the 90-day period has ended, those that could have waived in through the expedited process) may apply for membership in BATS Y Exchange by submitting a full membership application to BATS Y Exchange.[70] Applications for association with an Exchange Member shall be submitted to the Exchange on Form U–4 and such other forms as BATS Y Exchange may prescribe.

BATS Y Exchange will receive and review all applications for membership in the Exchange. If the Exchange is satisfied that the applicant is qualified for membership, the Exchange will promptly notify the applicant, in writing, of such determination, and the applicant shall be a member of the Exchange.[71] If the Exchange is not satisfied that the applicant is qualified for membership, the Exchange shall promptly notify the applicant of the grounds for denial.[72] Once an applicant is a member of the Exchange, it must continue to possess all the qualifications set forth in the BATS Y Exchange rules. When the Exchange has reason to believe that an Exchange member or associated person of a member fails to meet such qualifications, the Exchange may suspend or revoke such person's membership or association.[73]

Appeal of a staff denial, suspension, or revocation of membership will be heard by the Appeals Committee.[74] Decisions of the Appeals Committee will be made in writing and will be sent to the parties to the proceeding. The decisions of the Appeals Committee will be subject to review by the Exchange Board, on its own motion, or upon written request by the aggrieved party or by the Chief Regulatory Officer ("CRO"). The Exchange Board will have sole discretion to grant or deny the request. The Exchange Board will conduct the review of the Appeals Committee's decision. The Exchange Board may affirm, reverse, or modify the Appeals Committee's decision. The Exchange Board's decision is final.[75]

The Commission finds that the BATS Y Exchange's membership rules are consistent with Section 6 of the Act,[76] specifically Section 6(b)(2) of the Act,[77] which requires that a national securities exchange have rules that provide that any registered broker or dealer or natural person associated with such broker or dealer may become a member and any person may become associated with an exchange member. The Commission notes that pursuant to Section 6(c) of the Act, an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, BATS Y Exchange must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.[78]

2. Regulatory Independence

BATS Y Exchange has proposed several measures to help ensure the independence of its regulatory function from its market operations and other commercial interests. The regulatory operations of BATS Y Exchange will be supervised by the CRO and monitored by the Regulatory Oversight Committee. The Regulatory Oversight Committee will consist of three members, each of whom must be a Non-Industry Director.[79] The Regulatory Oversight Committee will be responsible for monitoring the adequacy and effectiveness of the Exchange's regulatory program, assessing the Exchange's regulatory performance, and assisting the Exchange Board in reviewing the Exchange's regulatory plan and the overall effectiveness of the Exchange's regulatory functions.[80] The Regulatory Oversight Committee also will meet with the CRO in executive session at regularly scheduled meetings and at any time upon request of the CRO or any member of the Regulatory Oversight Committee.[81]

BATS Y Exchange proposes that its CRO have general supervision of the regulatory operations of the Exchange, including overseeing surveillance, examination, and enforcement functions.[82] The CRO also will administer any regulatory services agreement with another SRO to which BATS Y Exchange is a party.[83] The CRO will be an Executive Vice President or Senior Vice President that reports directly to the Chief Executive Officer.[84] The CRO also may serve as BATS Y Exchange's General Counsel.[85]

In addition, BATS Y Exchange has taken steps designed to provide sufficient funding for the Exchange to carry out its responsibilities under the Act. Specifically, BATS Y Exchange has represented that: (1) BATS Global Markets will allocate sufficient operational assets and make a capital contribution to the Exchange's capital account prior to the launch of the Exchange; (2) such an allocation and contribution will be adequate to operate the Exchange, including the regulation of the Exchange; and (3) there will be an explicit agreement between the Exchange and BATS Global Markets that requires BATS Global Markets to provide adequate funding for BATS Y Exchange's operations, including the regulation of the Exchange.[86] In addition, any revenues received by BATS Y Exchange from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes.[87]

3. Regulatory Contract

Although BATS Y Exchange will be an SRO with all of the attendant regulatory obligations under the Act, it has entered into a regulatory services agreement with FINRA ("Regulatory Contract"), under which FINRA will perform certain regulatory functions on BATS Y Exchange's behalf.[88] Specifically, BATS Y Exchange represents that FINRA will assist Exchange staff on registration issues on an as-needed basis, investigate potential violations of BATS Y Exchange's rules or federal securities laws related to activity on the Exchange, conduct examinations related to market conduct on the Exchange by Members, assist the Exchange with disciplinary proceedings pursuant to BATS Y Exchange's Rules, including issuing charges and conducting hearings, and provide

[69] *Id.*

[70] *See* BATS Y Exchange Rule 2.6.

[71] *See* BATS Y Exchange Rule 2.6(c).

[72] *See* BATS Y Exchange Rule 2.6(d).

[73] *See* BATS Y Exchange Rule 2.7; *see also* BATS Y Exchange Rules Chapters VII and VIII.

[74] *See* BATS Y Exchange Rule 10.3; *see also* BATS Y Exchange proposed Amended and Restated By-Laws Article V, Section 6(d).

[75] *See* BATS Y Exchange Rule 10.5(b). Membership decisions are subject to review by the Commission. *See* BATS Y Exchange Rule 10.7.

[76] 15 U.S.C. 78f.

[77] 15 U.S.C. 78f(b)(2).

[78] *See* Nasdaq Exchange Registration Order, *supra* note 27.

[79] *See* BATS Y Exchange proposed Amended and Restated By-Laws Articles I(v) and V, Section 6(c).

[80] *See* BATS Exchange Amended and Restated By-Laws Article V, Section 6(c).

[81] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article VII, Section 9.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id. See also* Nasdaq Exchange Registration Order, *supra* note 27.

[86] *See* Amendment No. 1.

[87] *See* BATS Y Exchange proposed Amended and Restated By-Laws Article X, Section 4.

[88] *See* BATS Y Exchange Rule 13.7; *see also* Amendment No. 1. Pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations thereunder, 17 CFR 200.83, BATS Y Exchange has requested confidential treatment for the Regulatory Contract.

dispute resolution services to BATS Y Exchange Members on behalf of the Exchange, including operation of the Exchange's arbitration program. BATS Y Exchange represents that FINRA also will provide the Exchange with access to FINRA's WebCRD system, and will assist with programming BATS Y-specific functionality relating to such system.[89] Notwithstanding the Regulatory Contract, BATS Y Exchange will retain ultimate legal responsibility for the regulation of its members and its market.

The Commission believes that it is consistent with the Act to allow BATS Y Exchange to contract with FINRA to perform examination, enforcement, and disciplinary functions.[90] These functions are fundamental elements to a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions on behalf of BATS Y Exchange.[91]

At the same time, BATS Y Exchange, unless relieved by the Commission of its responsibility,[92] bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf. In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of BATS Y Exchange to perform its regulatory functions.[93] Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for BATS Y Exchange, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by BATS Y Exchange.[94]

4. 17d–2 Agreement

Section 19(g)(1) of the Act[95] requires every SRO to examine its members and persons associated with its members and to enforce compliance with the federal securities laws and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) of the Act.[96] Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to members of more than one SRO ("common members").[97] Rule 17d–2 of the Act permits SROs to propose joint plans allocating regulatory responsibilities concerning common members.[98] These agreements, which must be filed with and approved by the Commission, generally cover such regulatory functions as personnel registration, branch office examinations, and sales practices. Commission approval of a 17d–2 plan relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.[99] Many existing SROs have entered in to such agreements.[100]

BATS Y Exchange has represented to the Commission that BATS Y Exchange and FINRA intend to file a 17d–2 agreement with the Commission covering common members of BATS Y Exchange and FINRA. This agreement would allocate to FINRA regulatory responsibility, with respect to common members, for the following:[101]

- FINRA will examine common members of BATS Y Exchange and FINRA for compliance with federal securities laws, rules and regulations, and rules of BATS Exchange that have been certified by BATS Y Exchange as identical or substantially similar to FINRA rules.
- FINRA will investigate common members of BATS Y Exchange and FINRA for violations of federal securities laws, rules or regulations, or BATS Y Exchange rules that has been certified by BATS Y Exchange as identical or substantially identical to a FINRA rule.
- FINRA will enforce compliance by common members with federal securities laws, rules and regulations, and rules of BATS Y Exchange that have been certified by BATS Y Exchange as identical or substantially similar to FINRA rules.

Because BATS Y Exchange anticipates entering into this 17d–2 agreement, it has not made provision to fulfill the regulatory obligations that would be undertaken by FINRA under this agreement with respect to common members of BATS Y Exchange and FINRA.[102] Accordingly, the Commission is conditioning the operation of BATS Y Exchange on approval by the Commission of a 17d–2 agreement between BATS Y Exchange and FINRA that allocates the above specified matters to FINRA.[103]

5. Discipline and Oversight of Members

As noted above, a prerequisite for the Commission approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act. Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and the rules of the exchange.[104] As noted above, pursuant to the Regulatory Contract, FINRA will perform many of the initial disciplinary processes on behalf of BATS Y Exchange.[105] For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings

[89] *See* Amendment No. 1.

[90] *See, e.g.,* Regulation ATS Release, *supra* note 52. *See also* Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR–Amex–2004–32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) ("Amex Regulatory Services Approval Order"); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004) ("NOM Approval Order"); Nasdaq Exchange Registration Order, *supra* note 27; BATS Exchange Order, *supra* note 18; and EDGX and EDGA Exchange Order, *supra* note 18.

[91] *See, e.g.,* Amex Regulatory Services Approval Order, *supra* note 90; NOM Approval Order, *supra* note 90; and Nasdaq Exchange Registration Order, *supra* note 27. The Commission notes that the Regulatory Contract is not before the Commission and, therefore, the Commission is not acting on it.

[92] *See* Section 17(d)(1) of the Act and Rule 17d–2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. *See also infra* notes 95–103 and accompanying text.

[93] For example, if failings by FINRA have the effect of leaving BATS Y Exchange in violation of any aspect of BATS Y Exchange's self-regulatory obligations, BATS Y Exchange would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. *See, e.g.,* Nasdaq Exchange Registration Order, *supra* note 27; BATS Exchange Order, *supra* note 18; EDGX and EDGA Exchange Order, *supra* note 18; and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (order approving the International Securities Exchange LLC's application for registration as a national securities exchange).

[94] *Id.*

[95] 15 U.S.C. 78s(g)(1).

[96] 15 U.S.C. 78q(d).

[97] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) ("Rule 17d–2 Adopting Release").

[98] 17 CFR 240.17d–2.

[99] *See* Rule 17d–2 Adopting Release, *supra* note 97.

[100] *See, e.g.,* Securities Exchange Act Release Nos. 13326 (March 3, 1977), 42 FR 13878 (March 14, 1977) (NYSE/Amex); 13536 (May 12, 1977), 42 FR 26264 (May 23, 1977) (NYSE/BSE); 14152 (November 9, 1977), 42 FR 59339 (November 16, 1977) (NYSE/CSE); 13535 (May 12, 1977), 42 FR 26269 (May 23, 1977) (NYSE/CHX); 13531 (May 12, 1977), 42 FR 26273 (May 23, 1977) (NYSE/PSE); 14093 (October 25, 1977), 42 FR 57199 (November 1, 1977) (NYSE/Phlx); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (NASD/BSE, CSE, CHX and PSE); 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (NASD/BSE, CSE, CHX and PSE); 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (NASD/ISE); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (NASD/Nasdaq).

[101] *See* Amendment No 1.

[102] The Commission notes that regulation that is to be covered by the 17d–2 agreement for common members will be carried out by FINRA under the Regulatory Contract for BATS Y Exchange members that are not also members of FINRA.

[103] Alternatively, BATS Y Exchange could demonstrate that it has the ability to fulfill its regulatory obligations.

[104] *See* 15 U.S.C. 78f(b)(1).

[105] *See supra* note 90 and accompanying text.

pursuant to BATS Y Exchange rules. Appeals from disciplinary decisions will be heard by the Appeals Committee [106] and the Appeals Committee's decision shall be final. In addition, the Exchange Board may on its own initiative order review of a disciplinary decision.[107]

The BATS Y Exchange proposed Amended and Restated By-Laws and BATS Y Exchange rules provide that the Exchange has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws.[108] The Exchange's rules also permit it to sanction members for violations of its rules and violations of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member, or any other fitting sanction.[109] BATS Y Exchange's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.[110] Accordingly, as a condition to the operation of BATS Y Exchange, a Minor Rule Violation Plan ("MRVP") filed by BATS Y Exchange under Act Rule 19d–1(c)(2) must be declared effective by the Commission.[111]

The Commission finds that the BATS Y Exchange's proposed Amended and Restated By-Laws and rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) [112] of the Act in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of BATS Y Exchange provide it with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of BATS Y Exchange.[113]

C. BATS Y Exchange Trading System

1. Trading Rules

BATS Y Exchange will operate a fully automated electronic order book. Exchange members and entities that enter into sponsorship arrangements with Exchange members will have access to the BATS Y Exchange system (collectively, "Users").[114] Users will be able to electronically submit market and various types of limit orders to the Exchange from remote locations. BATS Y Exchange will not have a trading floor, but will allow firms to register as market makers with affirmative and negative market making obligations.[115] All orders submitted to BATS Y Exchange will be displayed unless designated otherwise by the BATS Y Exchange member submitting the order. Displayed orders will be displayed on an anonymous basis at a specified price. Non-displayed orders will not be displayed but will be ranked in the BATS Y Exchange system at a specified price. The BATS Y Exchange system will continuously and automatically match orders pursuant to price/time priority, except that displayed orders will have priority over non-displayed orders at the same price.[116]

The BATS Y Exchange system is designed to comply with Rule 611 of Regulation NMS [117] by requiring that, for any execution to occur on the Exchange during regular trading hours, the price must be equal to, or better than, any "protected quotation" within the meaning of Regulation NMS ("Protected Quotation"), unless an exception to Rule 611 of Regulation NMS applies.[118] BATS Y Exchange will direct any orders or portion of orders that cannot be executed in their entirety to away markets for execution through BATS Trading, unless the terms of the orders direct the Exchange not to route such orders away.[119]

BATS Y Exchange intends to operate as an automated trading center in compliance with Rule 600(b)(4) of Regulation NMS.[120] BATS Y Exchange will display automated quotations at all times except in the event that a systems malfunction renders the system incapable of displaying automated quotations.[121] The Exchange has designed its rules relating to orders, modifiers, and order execution to comply with the requirements of Regulation NMS, including an immediate-or-cancel functionality.[122] These proposed rules include accepting orders marked as intermarket sweep orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other trading centers,[123] and routing orders marked as intermarket sweep orders by a User to a specific trading center for execution.[124] In addition, BATS Y Exchange rules address locked and crossed markets,[125] as required by Rule 610(d) of Regulation NMS.[126] The Commission believes that BATS Y Exchange's rules are consistent with the Act, in particular with the requirements of Rule 610(d) and Rule 611 of Regulation NMS.

As stated above, BATS Y Exchange intends to operate as an automated trading center and have its best bid and best offer be a Protected Quotation.[127] To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new Protected Quotations, as well as all necessary information (such as final technical specifications).[128] Therefore, the Commission believes that it would be a reasonable policy and procedure under Rule 611(a) for industry participants to begin treating BATS Y Exchange's best bid and best offer as a Protected Quotation within 90 days after the date of this order, or such later date as BATS Y Exchange begins operation as a national securities exchange.

2. Section 11 of the Act

Section 11(a)(1) of the Act [129] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person

[106] *See* BATS Y Exchange Rule 8.10(b).

[107] *See* BATS Y Exchange Rule 8.10(c).

[108] *See generally* BATS Y Exchange proposed Amended and Restated By-Laws Article X and BATS Y Exchange Rules Chapters II and VIII.

[109] *See* BATS Y Exchange Rules 2.2 and 8.1(a).

[110] *See* BATS Y Exchange Rule 8.15.

[111] 17 CFR 240.19d–1(c)(2).

[112] 15 U.S.C. 78f(b)(6) and (b)(7).

[113] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[114] To obtain authorized access to the BATS Y Exchange System, each User must enter in to a User Agreement with the Exchange. *See* BATS Y Exchange Rule 11.3(a).

[115] *See* BATS Y Exchange Rules 11.5 through 11.8. BATS Y Exchange's rules relating to maker makers are consistent with the rules of other national securities exchanges. *See, e.g.,* BATS Exchange Rules 11.5 through 11.8; and National Stock Exchange, Inc. Rules 11.5 through 11.8.

[116] *See* BATS Y Exchange Rule 11.12.

[117] 17 CFR 242.611.

[118] *See* BATS Y Exchange Rule 11.13.

[119] *See* BATS Y Exchange Rule 11.13(a)(2).

[120] 17 CFR 242.600(b)(4).

[121] *See* BATS Y Exchange Rule 11.13(c); *see also* 17 CFR 242.600(b)(3).

[122] *See* BATS Y Exchange Rules 11.9 and 11.13; *see also* 17 CFR 242.600(b)(3).

[123] *See* BATS Y Exchange Rule 11.9(d)(1).

[124] *See* BATS Y Exchange Rule 11.9(d)(2).

[125] *See* BATS Y Exchange Rule 11.20.

[126] 17 CFR 242.610(d).

[127] 17 CFR 242.600(b)(58).

[128] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7–10–04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Act).

[129] 15 U.S.C. 78k(a)(1).

exercises discretion (collectively, "covered accounts") unless an exception applies. Rule 11a2–2(T) under the Act,[130] known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [131] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, BATS Y Exchange requested that the Commission concur with BATS Y Exchange's conclusion that BATS Y Exchange members that enter orders into the BATS Y Exchange system satisfy the requirements of Rule 11a2–2(T).[132] For reasons set forth below, the Commission believes that BATS Y Exchange members entering orders into the BATS Y Exchange system would satisfy the conditions of the Rule.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. The BATS Y Exchange system receives orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[133] Since the BATS Y Exchange system receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the BATS Y Exchange system satisfies the off-floor transmission requirement.

Second, the rule requires that the member not participate in the execution of its order. BATS Y Exchange represented that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order's execution.[134] According to BATS Y Exchange, the execution of a member's order is determined solely by what orders, bids, or offers are present in the system at the time the member submits the order. Accordingly, the Commission believes that a BATS Y Exchange member would not participate in the execution of an order submitted into the BATS Y Exchange system.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the BATS Y Exchange system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[135] BATS Y Exchange has represented that the design of the BATS Y Exchange system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to BATS Y Exchange.[136] Based on BATS Y Exchange's representation, the Commission believes that the BATS Y Exchange system satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[137] BATS Y Exchange represented that BATS Y Exchange members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[138]

D. Section 11A of the Act

Section 11A of the Act and the rules thereunder form the basis of our national market system and impose requirements on exchanges to implement its objectives. Specifically, national securities exchanges are required, under Rule 601 of Regulation NMS,[139] to file transaction reporting plans regarding transactions in listed equity and Nasdaq securities that are

[130] 17 CFR 240.11a2–2(T).

[131] The member may, however, participate in clearing and settling the transaction.

[132] *See* to Elizabeth M. Murphy, Secretary, Commission, from Anders Franzon, Vice President and Associate General Counsel, BATS Exchange, Inc., dated June 30, 2010 ("BATS Y Exchange 11(a) Letter").

[133] *See, e.g.,* Securities Exchange Act Release Nos. 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (order approving proposed rules of NASDAQ OMX BX); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange as electronic trading facility of the Pacific Exchange ("PCX")("ArcaEx Order")); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange ("Amex") Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange's ("Phlx") Automated Communications and Execution System ("1979 Release")); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System ("1978 Release")).

[134] *See* BATS Y Exchange 11(a) Letter, *supra* note 132. The member may cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. *Id.* The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

[135] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 133.

[136] *See* BATS Y Exchange 11(a) Letter, *supra* note 132.

[137] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 133 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

[138] *See* BATS Y Exchange 11(a) Letter, *supra* note 132.

[139] 17 CFR 242.601.

executed on their facilities. Currently registered exchanges satisfy this requirement by participating in the Consolidated Transaction Association Plan ("CTA Plan") for listed equities and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq UTP Plan") for Nasdaq securities.[140] Before BATS Y Exchange can begin operating as an exchange, it must join these plans as a participant.

National securities exchanges are required, under Rule 602 of Regulation NMS,[141] to collect bids, offers, quotation sizes and aggregate quotation sizes from those members who are responsible broker or dealers. National securities exchanges must then make this information available to vendors at all times when the exchange is open for trading. The current exchanges satisfy this requirement by participating in the Consolidated Quotation System Plan ("CQ Plan") for listed equity securities and the Nasdaq UTP Plan for Nasdaq securities. Before BATS Y Exchange can begin operating as an exchange it also must join the CQ Plan as a participant, in addition to the CTA Plan and the Nasdaq UTP Plan.

Finally, national securities exchanges must make available certain order execution information pursuant to Rule 605 of Regulation NMS.[142] Current exchanges have standardized the required disclosure mechanisms by participating in the Order Execution Quality Disclosure Plan.[143] BATS Y Exchange must join this plan before it begins operations as an exchange.

E. Order Routing

As discussed above, BATS Global Markets wholly owns BATS Y Exchange, BATS Exchange, and BATS Trading.[144] As such, BATS Y Exchange and BATS Exchange are affiliated with BATS Trading, which is a registered broker-dealer and member of FINRA. BATS Trading is a member of BATS Exchange and will become a member of BATS Y Exchange.

BATS Y Exchange's proposed Rule 2.10 provides generally that, without prior Commission approval, the Exchange may not, directly or indirectly, acquire or maintain an ownership interest in a member organization of such Exchange. In addition, BATS Y Exchange's Rule 2.10 provides that, without prior Commission approval, none of the Exchange's members may be or become an affiliate of the Exchange or an affiliate of an affiliate of the Exchange. However, BATS Y Exchange proposes that its affiliate, BATS Trading, become a member of the Exchange to provide certain routing services on behalf of the Exchange. Specifically, BATS Y Exchange proposes to (1) operate BATS Trading as a facility of the Exchange to provide outbound routing services to other securities exchanges,[145] automated trading systems, electronic communications networks, or other broker-dealers (collectively, "Trading Centers"), and (2) receive through BATS Trading orders routed inbound to the Exchange from its affiliated exchange (*i.e.,* BATS Exchange). Accordingly, BATS Y Exchange seeks Commission approval of an exception in the Exchange's Rule 2.10 that will permit the affiliation between the Exchange and its member, BATS Trading.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange, particularly where a member is routing orders to such affiliated exchange,[146] BATS Y Exchange has proposed limitations and conditions on BATS Trading's affiliation with the Exchange. Specifically, BATS Y Exchange proposes that BATS Trading operate as an affiliated outbound router on behalf of the Exchange, subject to certain conditions set forth in the Exchange's Rule 2.11; and that BATS Trading operate as an affiliated inbound router on behalf of the Exchange subject to certain conditions set forth in the Exchange's Rule 2.12.[147]

1. BATS Trading as Outbound Router

BATS Y Exchange proposes that BATS would operate as a facility (as defined in Section 3(a)(2) of the Act) of the Exchange providing outbound routing services from the Exchange to other Trading Centers.[148] BATS Trading's operation as a facility providing outbound routing services for BATS Y Exchange is subject to the conditions that:

- BATS Y Exchange regulates BATS Trading as a facility of the Exchange;
- FINRA, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, is BATS Trading's designated examining authority;
- BATS Trading will not engage in any business other than (a) its outbound router function, (b) its inbound router function as described in Exchange Rule 2.12, and (c) any other activities it may engage in as approved by the Commission;
- The use of BATS Trading for outbound routing by Exchange members is optional;
- The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including BATS Trading) and any other entity; [149] and
- The books, records, premises, officers, agents, directors and employees of BATS Trading as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act.

As a facility of BATS Y Exchange, BATS Trading will be subject to the Exchange's and the Commission's regulatory oversight, and BATS Y Exchange will be responsible for ensuring that BATS Trading's outbound routing function is operated consistent with Section 6 of the Act and the Exchange's rules. In addition, BATS Y Exchange will be required to file with the Commission proposed rule changes and fees relating to BATS Trading's outbound routing function. Any such rules and fees relating to BATS Trading's outbound router function will be subject to exchange non-discrimination requirements. The Commission notes that the proposed conditions for the operation of BATS Trading as affiliated outbound router on behalf of the Exchange are consistent with conditions the Commission has approved for other exchanges.[150] The

[140] These plans also satisfy the requirement in Rule 603 that national securities exchanges and national securities associations act jointly pursuant to an effective national market system plan to disseminate consolidated information, including a national best bid and offer, and quotations for and transactions in NMS stocks. *See* 17 CFR 242.603. *See also* Nasdaq Exchange Registration Order, *supra* note 27.

[141] 17 CFR 242.602.

[142] 17 CFR 242.605.

[143] *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[144] *See supra* Section III.A.

[145] Securities exchanges to which BATS Y Exchange proposes to route orders include its affiliated exchange (*i.e.,* BATS Exchange).

[146] *See e.g.,* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 FR (March 6, 2006).

[147] *See* BATS Y Exchange Rules 2.11 and 2.12.

[148] *See* BATS Y Exchange Rule 2.11.

[149] *Id.*

[150] *See, e.g.,* Securities Exchange Act Release No. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (order approving outbound routing by broker-dealer affiliate of Nasdaq Stock Exchange);

Continued

Commission therefore finds the proposed operation of BATS Trading as an affiliated outbound router of BATS Y Exchange to be consistent with the Act.

2. BATS Trading as Inbound Router

BATS Y Exchange also proposes that BATS Trading, operating as a facility of the BATS Exchange, provide routing services from BATS Exchange to BATS Y Exchange (*i.e.,* "inbound" routing), subject to the following conditions and limitations:

- The Exchange enter into (1) a 17d–2 agreement with FINRA, a non-affiliated SRO,[151] to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) the Regulatory Contract with FINRA,[152] a non-affiliated SRO, to perform regulatory responsibilities for BATS Trading for unique Exchange rules.
- The Regulatory Contract requires the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission Rules, and requires that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which BATS Trading is identified as a participant that has potentially violated Exchange or Commission rules.
- BATS Y Exchange has in place a rule that requires BATS Global Market to establish and maintain procedures and internal controls reasonably designed to ensure that BATS Trading does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange.
- Routing of orders from BATS Trading to the Exchange, in BATS Trading's capacity as a facility of BATS Exchange, be authorized for a pilot period of 12 months.[153]

Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit BATS Trading to be affiliated with BATS Y Exchange and to provide inbound routing to BATS Y Exchange on a pilot basis, subject to the conditions described above.

BATS Y Exchange has proposed five conditions applicable to BATS Trading's inbound routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of BATS Trading,[154] combined with FINRA's monitoring of BATS Trading's compliance with the equity trading rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to BATS Trading. The Commission also believes that the requirement that BATS Y Exchange establish and maintain procedures and internal controls reasonably designed to ensure that BATS Trading does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange, is reasonably designed to ensure that BATS Trading cannot misuse any information advantage it may have because of its affiliation with the Exchange. Furthermore, the Commission believes that BATS Y Exchange's proposal to allow BATS Trading to route orders inbound to the Exchange from its affiliated exchange (*i.e.,* BATS Exchange), on a pilot basis, will provide BATS Y Exchange and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of an Exchange to route orders inbound to the Exchange and whether such affiliation provides an unfair competitive advantage.

Further, the Commission notes that the proposed conditions for the operation of BATS Trading as affiliated inbound router on behalf of BATS Y Exchange are consistent with conditions the Commission has approved for other exchanges.[155] The Commission therefore finds the proposed operation of BATS Trading as an affiliated inbound router of BATS Y Exchange is consistent with the Act.

F. Listing Requirements/Unlisted Trading Privileges

BATS Y Exchange initially does not intend to list any securities. Accordingly, BATS Y Exchange has not proposed rules that would allow it to list any securities at this time.[156] Instead, BATS Y Exchange has proposed to trade securities pursuant to unlisted trading privileges, consistent with Section 12(f) of the Act and Rule 12f–5 thereunder. Rule 12f–5 requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.[157] BATS Y Exchange's rules allow it to extend unlisted trading privileges to any security listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Act.[158] BATS Y Exchange's proposed rules provide for transactions in the class or type of security to which the exchange intends to extend unlisted trading privileges.[159] In addition, pursuant to its rules, BATS Y Exchange will cease trading any equity security admitted to unlisted trading privileges that is no longer listed on another national securities exchange or to which unlisted trading privileges may no longer be extended, consistent with Section 12(f). The Commission finds that these rules are consistent with the Act.

BATS Exchange Order, *supra* note 18; and EDGX and EDGA Exchange Order, *supra* note 18.

[151] *See supra* Section III.B.4 for a discussion of the Rule 17d–2 agreement.

[152] *See supra* Section III.B.3 for a discussion of the Regulatory Contract.

[153] *See* BATS Y Exchange Rule 2.12.

[154] This oversight will be accomplished through the Rule 17d–2 agreement and the Regulatory Contract.

[155] *See e.g.,* Securities Exchange Release Nos. 60598 (September 1, 2009), 74 FR 46280 (September 8, 2009) (SR–ISE–2009–45); 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (order approving proposed rulebook of NASDAQ OMX BX); 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order granting accelerated approval to File No. SR–NYSEALTR–2008–07); and EDGX and EDGA Exchange Order, *supra* note 18.

[156] BATS Y Exchange has incorporated listing standards for certain derivative securities products in its rules. However, BATS Y Exchange's rules will prohibit BATS Y Exchange from listing any derivative security product pursuant to these listing standards until BATS Y Exchange submits a proposed rule change to the Commission to amend its listing standards to comply with Rule 10A–3 under the Act and incorporate qualitative listing criteria. *See* BATS Y Exchange Rule 14.1(a).

[157] 17 CFR 240.12f–5. *See also* Securities Exchange Act Release No. 35737 (April 21, 1995), 60 FR 20891 (April 28, 1995) (adopting Rule 12f–5).

[158] *See* BATS Y Exchange Rule 14.1(a).

[159] *Id.* BATS Y Exchange's rules currently do not provide for the trading of options, security futures, or other similar instruments.

IV. Exemption From Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

BATS Y Exchange proposes to incorporate by reference certain FINRA rules as Exchange rules. Thus, for certain Exchange rules, Exchange members will comply with an Exchange rule by complying with the FINRA rule referenced.[160] In connection with its proposal to incorporate FINRA rules by reference, BATS Y Exchange requested, pursuant to Rule 240.0–12,[161] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those BATS Y Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.[162] BATS Y Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. BATS Y Exchange agrees to provide written notice to its members whenever a proposed rule change to a FINRA rule that is incorporated by reference is proposed.[163]

Using its authority under Section 36 of the Act,[164] the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.[165] Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules.

In addition, each such exempt SRO incorporated by reference only regulatory rules (*i.e.,* margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (*i.e.,* did not "cherry-pick" certain individual rules within a category). Each such exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting BATS Y Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that BATS Y Exchange proposes to incorporate by reference. This exemption is conditioned upon BATS Y Exchange providing written notice to its members whenever FINRA proposes to change a rule that BATS Y Exchange has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules sought by more than one SRO. Consequently, the Commission grants BATS Y Exchange's exemption request.

V. Conclusion

It is ordered that the application of BATS Y Exchange for registration as a national securities exchange be, and hereby is, granted.

It is further ordered that operation of BATS Y Exchange is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans.* BATS Y Exchange must join the CTA Plan, the CQ Plan, the Nasdaq UTP Plan, and the Order Execution Quality Disclosure Plan.

B. *Intermarket Surveillance Group.* BATS Y Exchange must join the Intermarket Surveillance Group.

C. *Minor Rule Violation Plan.* A MRVP filed by BATS Y Exchange under Rule 19d–1(c)(2) must be declared effective by the Commission.[166]

D. *17d–2 Agreement.* An agreement pursuant to Rule 17d–2 [167] between FINRA and BATS Y Exchange that allocates to FINRA regulatory responsibility for those matters specified above [168] must be approved by the Commission, or BATS Y Exchange must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. *Examination by the Commission.* BATS Y Exchange must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate BATS Y Exchange.

F. *Trade Processing and Exchange Systems.* BATS Y Exchange must have, and represent in a letter to the staff in the Commission's Division of Trading and Markets that it has, adequate procedures and programs in place, as noted in Commission Automation Policy Review guidelines,[169] to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange's systems.

G. *BATS Exchange Inbound Routing.* BATS Exchange must have in place rules approved by the Commission relating to an inbound routing structure that is consistent with what the Commission has approved for other national securities exchanges that receive orders from affiliated routers.[170]

It is further ordered, pursuant to Section 36 of the Act,[171] that BATS Y Exchange shall be exempt from the rule filing requirements of Section 19(b) of the Act [172] with respect to the FINRA rules BATS Y Exchange proposes to incorporate by reference into BATS Y Exchange's rules, subject to the conditions specified in this Order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20536 Filed 8–18–10; 8:45 am]

BILLING CODE 8010–01–P

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62725; File No. 4–609]

Joint Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps and Security-Based Swaps

AGENCY: Commodity Futures Trading Commission ("CFTC") and Securities

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[160] BATS Y Exchange proposes to incorporate by reference the 12000 and 13000 Series of FINRA's NASD Manual, the NASD Code of Arbitration Procedure for Customer and Industry Disputes. *See* BATS Y Exchange Rule 9.1.

[161] *See* 17 CFR 240.0–12.

[162] *See* to Elizabeth M. Murphy, Secretary, Commission, from Anders Franzon, Vice President and Associate General Counsel, BATS Exchange, Inc., dated June 30, 2010.

[163] BATS Exchange will provide such notice via a posting on the same Web site location where BATS Exchange will post its own rule filings pursuant to Commission Rule 19b–4(*l*). The posting will include a link to the location on the FINRA Web site where the proposed rule change is posted. *See id.*

[164] 15 U.S.C. 78mm.

[165] *See, e.g.,* NOM Approval Order, *supra* note 90; Nasdaq Exchange Registration Order, *supra* note 27; BATS Exchange Order, *supra* note 18; and EDGX and EDGA Exchange Order, *supra* note 18.

[166] 17 CFR 240.19d–1(c)(2).

[167] 17 CFR 240.17d–2.

[168] *See supra* notes 95 to 103 and accompanying text.

[169] On November 16, 1989, the Commission published its first Automation Review Policy ("ARP I"), in which it created a voluntary framework for self-regulatory organizations to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. On May 9, 1991, the Commission published its second Automation Review Policy ("ARP II") to clarify the types of review and reports that were expected from self-regulatory organizations. *See* Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989); and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

[170] *See supra* note 155.

[171] 15 U.S.C. 78mm.

[172] 15 U.S.C. 78s(b).

and Exchange Commission ("SEC") (each, an "Agency," and collectively, the "Agencies").

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On August 20, 2010, commencing at 9 a.m. and ending at 12 p.m., staff of the Agencies will hold a public roundtable discussion at which invited participants will discuss governance and conflicts of interest in the context of certain authority that Sections 726 and 765 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") granted to the Agencies respectively. The discussion will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen by telephone. Call-in participants should be prepared to provide their first name, last name, and affiliation. The information for the conference call is set forth below.

- U.S./Canada Toll-Free: (866) 312–4390.
- International Toll: (404) 537–3379.
- Conference ID: 94280143.

A transcript of the public roundtable discussion will be published on the CFTC's governance rulemaking page at *http://www.cftc.gov/LawRegulation/OTCDerivatives/OTC_9_DCOGovernance.html.*

The roundtable discussion will take place in Lobby Level Hearing Room (Room 1000) at the CFTC's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The CFTC's Office of Public Affairs at (202) 418–5080 or the SEC's Office of Public Affairs at (202) 551–4120.

SUPPLEMENTARY INFORMATION: The roundtable discussion will take place on Friday, August 20, 2010, commencing at 9 a.m. and ending at 12 p.m. Members of the public who wish to submit their views on the topics addressed at the discussion, or on any other topics related to governance and conflicts of interest in the context of the Act, may do so via:

- Paper submission to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, or Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; or
- Electronic submission to the e-mail address provided on the CFTC's governance rulemaking page (all e-mails must reference "Dodd-Frank Governance" in the subject field); and/or by email to *rule-comments@sec.gov* or through the comment form available at: *http://www.sec.gov/news/press/2010/2010–148.htm.*

All submissions will be reviewed jointly by the Agencies. All comments must be in English or be accompanied by an English translation. All submissions provided to either Agency in any electronic form or on paper will be published on the Web site of the respective Agency, without review and without removal of personally identifying information. Please submit only information that you wish to make publicly available.

By the Securities and Exchange Commission.

Dated: August 16, 2010.

Elizabeth M. Murphy,

Secretary.

By the Commodity Futures Trading Commission.

Dated: August 16, 2010.

David A. Stawick,

Secretary.

[FR Doc. 2010–20591 Filed 8–18–10; 8:45 am]

BILLING CODE 8010–01–P, 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62719; File No. SR–BX–2010–056]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Establishing Strike Price Intervals for Options on Trust Issued Receipts, Including Holding Company Depositary Receipts

August 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 9, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the "Exchange") proposes to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to establish strike price intervals for options on Trust Issued Receipts ("TIRs"), including Holding Company Depositary Receipts ("HOLDRs"). The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter IV, Section 6, Supplementary Material .01 of the BOX Rules to allow BOX to list options on Trust Issued Receipts ("TIRs"), including Holding Company Depository Receipts ("HOLDRs"), in $1 or greater strike price intervals, where the strike price is $200 or less, and $5 or greater where the strike price is greater than $200.[3]

Currently, the strike price intervals for options on TIRs are as follows: (1) $2.50 or greater where the strike price is $ 25.00 or less; (2) $5.00 or greater where the strike price is greater than $25.00; and (3) $10.00 or greater where the strike price is greater than $200.[4]

BOX is seeking to permit $1 strikes for options on TIRs where the strike price is less than $200 because TIRs have characteristics similar to exchange traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] HOLDRs are a type of TIR and the current proposal would permit $1 strikes for options on HOLDRS where the strike price is less than $200.

[4] *See* Chapter IV, Section 6(d) of the BOX Rules.

receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs, which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike is greater than $200. Accordingly, BOX believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for options on TIRs. BOX has analyzed its capacity and believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes where the strike price is less than $200 for options on TIRs.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 ("Exchange Act"),[5] in general, and Section 6(b)(5) of the Exchange Act,[6] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism for a free and open market and national market system and, in general, to protect investors and the public interest. In particular, BOX believes that the marketplace and investors expect options on TIRs to trade in a similar manner to ETF options. BOX further believes that investors will be better served if $1 strike price intervals are available for options on TIRs where the strike price is less than $200.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange that has been approved by the Commission.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[9] *See* Securities Exchange Release No. 34–62141 (May 20, 2010), 75 FR 29787 (May 27, 2010) (SR–CBOE–2010–036).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–056 and should be submitted on orbefore September 9, 2010.

[11] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20554 Filed 8–18–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62712; File No. SR–CBOE–2010–074]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposal To Extend the Cut-Off Time To Submit Contrary Exercise Advices

August 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CBOE proposes to amend Rule 11.1 to extend the cut-off time to submit contrary exercise advices. The text of the rule proposal is available on the Exchange's website (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 11.1 to extend the cut-off time to submit contrary exercise advices ("Contrary Exercise Advice", or, "CEA")[5] to the Exchange. The Exchange also proposes to make certain non-substantive changes to the text of Rule 11.1 to more clearly present the existing requirements.

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their "contrary intention."

In addition to and separate from the OCC requirement, under Exchange Rule 11.1 option holders must file a CEA with the Exchange notifying it of the contrary intention. Rule 11.1 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. Trading Permit Holders satisfy this evidentiary requirement by submitting a CEA form directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Rule 11.1.

Currently under Rule 11.1, option holders have until 1 hour 28[6] minutes following the time announced for the close of trading on that day on the day prior to expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. A Trading Permit Holder may not accept CEA instructions from its customer or non customer accounts after 1 hour 28 minutes. However, the current rule gives Trading Permit Holders an additional one hour, up to 2 hours 28 minutes, to submit these CEA instructions to the Exchange where such Trading Permit Holder uses an electronic submission process.

The Exchange proposes to extend the current deadline for submitting CEA instructions to the Exchange by one additional hour and 2 minutes, up to 3 hours 30 minutes following the time announced for the close of trading on that day for those Trading Permit Holders who use an electronic submission process.[7] The Exchange believes that this proposed rule change is necessary to address concerns expressed by Trading Permit Holders that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. The proposed additional one hour and 2 minutes will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange.

It is important to note that this proposed submission deadline does not change the substantive requirement that option holders make a final decision by 1 hour and 30 minutes following the time announced for the close of trading on that day. The Exchange will continue to enforce the cut-off time to submit CEAs, while also allowing additional time to process and submit the CEAs. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. The initiative to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Contrary Exercise Advices are also referred to as Expiring Exercise Declarations ("EED") in the OCC rules.

[6] CBOE is proposing to amend the current rule relating to the deadline to make a final decision to exercise or not exercise an expiring option from 1 hour 28 minutes to 1 hour 30 minutes following the time announced for the close of trading on that day to make it consistent with the current equity option market close of trading (3:00 p.m. CT). *See* Securities Exchange Act Release No. 34–53246 (February 7, 2007), SR–CBOE–2005–104, 71 FR 8014 (February 15, 2006) (Order approving proposed change to amend Exchange Rules governing the hours of trading in equity options and narrow-based index options).

[7] That time would be 6:30 P.M. Central Time.

address Trading Permit Holder concerns is industry-wide, and the Exchange anticipates that other options exchanges will also propose a one hour extension for which they will accept a CEA.[8] This proposed additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

The Exchange is also making a technical change by deleting a misplaced reference to Exchange Rule 11.1(c)3.

If the operative date of this proposed rule change is more than 5 business days prior to the date of the next option expiration Friday ("Expiration Friday"),[9] the Exchange will implement the rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change is 5 business days or less prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. CBOE will notify Trading Permit Holders and TPH organizations of the implementation date of the rule change via a Regulatory Circular.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposed rule change will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing Trading Permit Holders an additional hour within which to complete the necessary processing of CEAs, will thereby decrease Trading Permit Holders' burden of processing an increasing number of contrary exercise advices and enable them to more easily manage and process these instructions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–074. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2010–074 and should be submitted on or before September 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20553 Filed 8–18–10; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* Securities Exchange Act Release No. 34–61710 (March 15, 2010), SR–ISE–2010–02, 75 FR 13636 (March 22, 2010) (order approving proposed change to amend ISE rules related to cut-off time for contrary exercise advice submission).

[9] For example, Expiration Friday for August 2010 options will be August 20, 2010, for Expiration Friday for September 2010 options will be September 17, 2010.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62718; File No. SR–FINRA–2010–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook

August 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items substantially have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability) as part of the Consolidated FINRA Rulebook. The proposed rules are based in large part on Incorporated NYSE Rule 405(1) (Diligence as to Accounts) and, NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related Interpretative Materials ("IMs") respectively. As further detailed herein, the proposed rule change would delete those NASD and Incorporated NYSE rules and related NASD IMs and Incorporated NYSE Rule Interpretations.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room. In addition, the text of the proposed rule change is included as Exhibit 5 on the Commission's Web site at: *http://www.sec.gov/rules/sro/finra.shtml,* under the heading SR–FINRA–2010–039.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to adopt FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability). The rules are based in large part on NYSE Rule 405(1) (Diligence as to Accounts) and NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related IMs, respectively.[4] As further discussed below, the proposed rule change would delete NASD Rule 2310, IM–2310–1 (Possible Application of SEC Rules 15g–1 through 15g–9), IM–2310–2 (Fair Dealing with Customers), IM–2310–3 (Suitability Obligations to Institutional Customers), NYSE Rule 405(1) through (3) (including NYSE Supplementary Material 405.10 through .30), and NYSE Rule Interpretations 405/01 through/04.[5]

The "know your customer" and suitability obligations are critical to ensuring investor protection and fair dealing with customers. Under the proposal, the core features of these obligations set forth in NYSE Rule 405(1) and NASD Rule 2310 remain intact. FINRA, however, proposes modifications to both rules to strengthen and clarify them. In *Regulatory Notice* 09–25 (May 2009), FINRA sought comment on the proposal. The current filing includes additional proposed changes that respond to comments.

Item II.C. of this filing provides a detailed discussion of the proposed modifications, comments FINRA received, and FINRA's responses thereto. In brief, however, the proposed FINRA "Know Your Customer" obligation, designated FINRA Rule 2090, captures the main ethical standard of NYSE Rule 405(1). As proposed, broker-dealers would be required to use "due diligence," in regard to the opening and maintenance of every account, in order to know the essential facts concerning every customer.[6] The obligation would arise at the beginning of the customer/broker relationship, independent of whether the broker has made a recommendation. The proposed supplementary material would define "essential facts" as those "required to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules."[7]

The proposal would eliminate the requirement in NYSE Rule 405(1) to learn the essential facts relative to "every order." FINRA proposes eliminating the "every order" language because of the application of numerous, specific order-handling rules.[8] In addition, the reasonable-basis obligation under the suitability rule requires broker-dealers and associated persons to perform adequate due diligence so that they "know" the securities and strategies they recommend.

FINRA also is proposing to delete NYSE Rule 405(2) through (3), NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[5] FINRA notes that NYSE Rule 405(4) was eliminated from the Transitional Rulebook on June 14, 2010 pursuant to a previous rule filing. *See* Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010) (Order Approving File No. SR–FINRA–2010–005); *see also Regulatory Notice* 10–21 (April 2010).

[6] *See* Proposed FINRA Rule 2090.

[7] *See* Proposed FINRA Rule 2090.01. As discussed *infra* at Item II.C. of this filing, FINRA changed the explanation of "essential facts" in response to comments.

[8] *See, e.g.,* SEC Regulation NMS (National Market System), 17 CFR 242.600–242.612; FINRA Rule 7400 Series (Order Audit Trail System); NASD Rule 2320 (Best Execution and Interpositioning) [proposed FINRA Rule 5310; *see Regulatory Notice* 08–80 (December 2008)]; NASD Rule 2400 Series (Commissions, Mark-Ups and Charges); NASD IM–2110–2 (Trading Ahead of Customer Limit Order) [proposed FINRA Rule 5320; *see* SR–FINRA–2009–090]; and IM–2110–3 (Front Running Policy) [proposed FINRA Rule 5270; *see Regulatory Notice* 08–83 (December 2008)].

Supplementary Material 405.10 through .30, and NYSE Rule Interpretation 405/01 through /04 because they generally are duplicative of other rules, regulations, or laws. For instance, NYSE Rule 405(2) requires firms to supervise all accounts handled by registered representatives. That provision is redundant because NASD Rule 3010 requires firms to supervise their registered representatives.[9]

NYSE Rule 405(3) generally requires persons designated by the member to be informed of the essential facts relative to the customer and to the nature of the proposed account and to then approve the opening of the account. A number of other existing and proposed FINRA rules do or will create substantially similar obligations. Proposed FINRA Rule 2090, discussed herein, would require members to know the essential facts as to each customer. NASD Rule 3110(c)(1)(C) requires the signature of the member, partner, officer or manager who accepts the account.[10]

A firm's account-opening obligations also are impacted by FINRA Rule 3310, which requires a firm to have procedures reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations. One of those regulations requires the firm to verify the identity of a customer opening a new account.[11] Another requires due diligence that would enable the firm to evaluate the risk of each customer and to determine if transactions by the customer could be suspicious and need to be reported.[12] Moreover, before certain customers can purchase certain types of investment products (such as options, futures or penny stocks) or engage in certain strategies (such as day trading), the firm must explicitly approve their accounts for such activity.[13]

NYSE Supplementary Material 405.10 is redundant of other FINRA proposed and existing requirements, and the cross references provided in .20 and .30 are no longer necessary. NYSE Supplementary Material 405.10 generally discusses the requirements that firms know their customers and understand the authority of third-parties to act on behalf of customers that are legal entities. Proposed FINRA Rule 2090 and proposed FINRA Supplementary Material 2090.01, discussed herein, would require firms to know the essential facts as to each customer. NYSE Supplementary Material 405.10 also discusses certain documentation obligations regarding persons authorized to act on behalf of various types of customers that are legal entities. NASD Rule 3110(c) (Customer Account Information), however, similarly requires firms to maintain a record identifying the person(s) authorized to transact business on behalf of a customer that is a legal entity.[14] NYSE Supplementary Material 405.20 and .30 provide cross references to NYSE Rule 382 (Carrying Agreements) and NYSE Rule 414 (Index and Currency Warrants), respectively, which are no longer necessary or appropriate for inclusion in proposed FINRA Rule 2090.

The NYSE Rule Interpretations also are redundant. NYSE Rule Interpretations 405/01 (Credit Reference—Business Background) and /02 (Approval of New Accounts/Branch Offices) recommend that the credit references and business backgrounds of a new account be cleared by a person other than the registered representative opening the account and require a designated person to ultimately approve a new account. These obligations are substantially similar to the requirements in NASD Rule 3110(c)(1)(C) and FINRA Rule 3310, discussed above.

NYSE Rule Interpretation 405/03 (Fictitious Orders) states that firm "personnel opening accounts and/or accepting orders for new or existing accounts should make every effort to verify the legitimacy of the account and the validity of every order." The interpretation contemplates knowing the customer behind the order as part of the process of ensuring that the order is bona fide. Proposed FINRA Rule 2090 and FINRA Rule 3310 together place similar requirements on firms to know their customers.

To the extent NYSE Rule Interpretation 405/03 seeks to guard against the use of fictitious trades as a means of manipulating markets, various FINRA rules cover such activities. FINRA Rule 5210 (Publication of Transactions and Quotations) prohibits members from publishing or circulating or causing to publish or circulate, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of, or purports to quote the bid or asked price for, any security unless such member believes that such transaction or quotation was bona fide. FINRA Rule 5220 (Offers at Stated Prices) prohibits members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell at such price and under such conditions as are stated at the time of such offer to buy or sell. Moreover, the use of fictitious transactions by a member or associated person to manipulate the market would violate FINRA's just and equitable principles of trade (FINRA Rule 2010) and anti-fraud provision (FINRA Rule 2020).[15]

NYSE Rule Interpretation 405/04 (Accounts in which Member Organizations have an Interest) discusses requirements regarding transactions initiated "on the Floor" for an account in which a member organization has an interest. The interpretation is directed to the NYSE marketplace. Moreover, Section 11(a) of the Act and the rules thereunder address trading by members of exchanges, brokers and dealers. For the reasons discussed above, FINRA believes NYSE Rule 405(1) through (3), NYSE Supplementary Material 405.10 through .30, and NYSE Rule Interpretations 405/01 through /04 are no longer necessary. They will be eliminated from the current FINRA rulebook upon Commission approval and implementation by FINRA of this current proposed rule change.

The proposed new suitability rule, designated FINRA Rule 2111, would require a broker-dealer or associated person to have "a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer * * *."[16] This assessment must be "based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile, including, but not

[9] FINRA is proposing to adopt NASD Rule 3010 as FINRA Rule 3110, subject to certain amendments. *See Regulatory Notice* 08–24 (May 2008).

[10] FINRA is proposing to adopt NASD Rule 3110(c)(1)(C) as FINRA Rule 4512(a)(1)(C), subject to certain amendments. *See Regulatory Notice* 08–25 (May 2008). Proposed FINRA Rule 4512(a)(1)(C) would clarify that members maintain the signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts.

[11] *See* 31 CFR 103.122.

[12] *See* 31 CFR 103.19.

[13] *See, e.g.,* SEA Rule 15g–1 through 15g–9 (Penny Stock Rules); FINRA Rule 2360 (Options); FINRA Rule 2370 (Security Futures); FINRA Rule 2130 (Approval Procedures for Day-Trading Accounts).

[14] As noted previously, FINRA is proposing to adopt NASD Rule 3110(c) as FINRA Rule 4512 (Customer Account Information), subject to certain amendments. *See Regulatory Notice* 08–25 (May 2008).

[15] *See, e.g., Terrance Yoshikawa,* Securities Exchange Act Release No. 53731, 2006 SEC LEXIS 948 (April 26, 2006) (upholding finding that president of broker-dealer violated just and equitable principles of trade and anti-fraud provisions by fraudulently entering orders designed to manipulate the price of securities).

[16] *See* Proposed FINRA Rule 2111(a).

limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation."[17]

The proposal would add the term "strategy" to the rule text so that the rule explicitly covers a recommended strategy. Although FINRA generally intends the term "strategy" to be interpreted broadly, the proposed supplementary material would exclude the following communications from the coverage of Rule 2111 as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities:

- General financial and investment information, including (i) basic investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment, (ii) historic differences in the return of asset classes (e.g., equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimating future retirement income needs, and (v) assessment of a customer's investment profile;
- Descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;
- Asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with NASD IM–2210–6 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an "investment analysis tool" covered by NASD IM–2210–6;[18] and
- Interactive investment materials that incorporate the above.[19]

The proposal also would codify interpretations of the three main suitability obligations, listed below:

- Reasonable basis (members must have a reasonable basis to believe, based on adequate due diligence, that a recommendation is suitable for at least *some* investors);
- Customer specific (members must have reasonable grounds to believe a recommendation is suitable for the particular investor at issue); and
- Quantitative (members must have a reasonable basis to believe the number of recommended transactions within a certain period is not excessive).[20]

In addition, the proposal would modify the institutional-customer exemption by focusing on whether there is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies,[21] and is exercising independent judgment in evaluating recommendations.[22] The proposal, moreover, would require institutional customers to affirmatively indicate that they are exercising independent judgment.[23] The proposal also would harmonize the definition of institutional customer in the suitability rule with the more common definition of "institutional account" in NASD Rule 3110(c)(4).[24]

Finally, the suitability proposal would eliminate or modify a number of the IMs associated with the existing suitability rule because they are no longer necessary. Some of the discussions are not needed because of the changes to the scope of the suitability rule proposed herein (*e.g.,* the proposed rule text would capture "strategies" currently referenced in IM–2310–3).[25] Others are redundant because they identify conduct explicitly covered by other rules (*e.g.,* inappropriate sale of penny stocks referenced in IM–2310–1 is covered by the SEC's penny stock rules,[26] fraudulent conduct identified in IM–2310–2 is covered by the FINRA and SEC anti-fraud provisions[27]).

Still other IM discussions have been incorporated in some form into the proposed rule or its supplementary material. For example, the exemption in IM–2310–3 dealing with institutional customers is modified and moved to the text of proposed FINRA Rule 2111.[28] In addition, the explication of the three main suitability obligations, currently located in IM–2310–2 and IM–2310–3, are consolidated into a single discussion in the proposed rule's supplementary material.[29] Similarly, the proposed rule's supplementary material includes a modified form of the current requirement in IM–2310–2 that a member refrain from recommending purchases beyond a customer's capability.[30] The supplementary material also retains the discussion in IM–2310–2 and IM–2310–3 regarding the suitability rule's significance in promoting fair dealing with customers and ethical sales practices.[31]

The only type of misconduct identified in the IMs that is neither explicitly covered by other rules nor incorporated in some form into the proposed new suitability rule is unauthorized trading, currently discussed in IM–2310–2. However, it is well-settled that unauthorized trading violates just and equitable principles of trade under FINRA Rule 2010 (previously NASD Rule 2110).[32]

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[17] *See* Proposed FINRA Rule 2111(a). As discussed *infra* at Item II.C. of this filing, FINRA modified various aspects of the proposed information-gathering requirements in response to comments.

[18] FINRA is proposing to adopt NASD IM–2210–6 as FINRA Rule 2214, without material change. *See Regulatory Notice* 09–55 (September 2009).

[19] *See* Proposed FINRA Rule 2111.02. As discussed *infra* at Item II.C. of this filing, FINRA included this exception to the rule's coverage in response to comments.

[20] *See* Proposed FINRA Rule 2111.03.

[21] *See* Proposed FINRA Rule 2111(b). The requirement in Proposed FINRA Rule 2111(b) that the firm or associated person have a reasonable basis to believe that "the institutional customer is capable of evaluating investment risks independently, *both in general and with regard to particular transactions and investment strategies*" comes from current IM–2310–3. As FINRA explained in that IM, "[i]n some cases, the member may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk." FINRA further stated that, "[i]f a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of a member's customer-specific obligations under the suitability rule would not be diminished by the fact that the member was dealing with an institutional customer." FINRA also stated that "the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent decision."

[22] *See* Proposed FINRA Rule 2111(b).

[23] *See* Proposed FINRA Rule 2111(b). As discussed *infra* at Item II.C. of this filing, FINRA substituted this requirement for another in response to comments. FINRA emphasizes that the institutional-customer exemption applies only if both parts of the two-part test are met: (1) There is a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, in general and with regard to particular transactions and investment strategies, *and* (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating recommendations.

[24] *See* Proposed FINRA Rule 2111(b). FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c), without material change. *See Regulatory Notice* 08–25 (May 2008).

[25] *See* Proposed Rule 2111(a).

[26] *See* SEA Rule 15g–1 through 15g–9.

[27] *See* Section 10(b) of the Act; FINRA Rule 2020.

[28] *See* Proposed Rule 2111(a).

[29] *See* Proposed Rule 2111.03.

[30] *See* Proposed Rule 2111.04.

[31] *See* Proposed Rule 2111.01.

[32] *See, e.g., Robert L. Gardner,* 52 S.E.C. 343, 344 n.1 (1995), *aff'd,* 89 F.3d 845 (9th Cir. 1996) (table

Consequently, the elimination of the discussion of unauthorized trading in the IMs following the suitability rule in no way alters the longstanding view that unauthorized trading is serious misconduct and clearly violates FINRA's rules.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 240 days following Commission approval.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[33] which requires, among other things, that FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change furthers these purposes because it requires firms and associated persons to know, deal fairly with, and make only suitable recommendations to customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As noted above, the proposed rule change was published for comment in *Regulatory Notice* 09–25 (May 2009). A copy of the *Notice* can be viewed at *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p118709.pdf.* FINRA received 2,083 comment letters, 389 of which were individualized letters and 1,694 of which were form letters. An index to the comment letters received in response to the *Notice* can be viewed at *http://www.finra.org/Industry/Regulation/Notices/2009/P118711,* and copies of the comment letters received in response to the *Notice* can also be accessed through that Web site. In addition, these documents, submitted with FINRA's filing as Exhibits 2a, 2b, and 2c, respectively, can be viewed at the Commission's Web site at: *http://www.sec.gov/rules/sro/finra.shtml,* under the heading SR–FINRA–2010–039.

Comments came from broker-dealers, insurers, investment advisers, academics, industry associations, investor-protection groups, lawyers in private practice, and a state government agency. Commenters had myriad different views regarding nearly every aspect of the proposal. A discussion of those comments and FINRA's responses thereto follows.

KNOW YOUR CUSTOMER

(Proposed FINRA Rule 2090)

The proposal would require broker-dealers to use "due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer." Although there were some comments generally in favor of the proposal,[34] most comments addressed specific language, as discussed below.

Essential Facts

The proposal states that broker-dealers must attempt to learn the "essential facts" concerning every customer. Supplementary Material .01 that was discussed in the *Notice* seeking comment clarified that "facts 'essential' to 'knowing the customer' included the customer's financial profile and investment objectives or policy." That language generated a fairly large number of comments.

• Comments

A number of commenters argued that the collection of financial profile and investment objective information under the proposed "know your customer" rule is a new requirement and unnecessarily confuses "know your customer" obligations with suitability obligations.[35] One commenter believed it would mislead customers into incorrectly thinking that a firm would only permit a customer to execute a self-directed transaction if it has determined that the transaction is appropriate for that customer.[36] Along those same lines, other commenters believed the requirement would be particularly problematic where a customer's trading activity is self-directed or directed by an independent investment adviser because regulators or private litigants could seek to hold firms accountable for permitting unsolicited customer trading activity that is inconsistent with the "know your customer" information that is on record at the firm.[37]

Some of these commenters supported "know your customer" obligations, but believed they should be limited in scope to essential facts necessary to open the account—*i.e.,* the identity and address of each account owner, the legal authorization of each person having investment authority with respect to the account, the source of funding for the account, and the credit status of the account owners.[38] Some commenters suggested removing proposed Supplementary Material .01 to Rule 2090 in its entirety and instead permitting each firm to interpret and apply the "essential facts" standard to their particular business model, recognizing that it is the nature of the relationship between the firm and customer that dictates those facts.[39] Another commenter similarly stated that the information should be limited to an investor's name, address, and tax identification number, which the commenter asserted was all the information that is needed to know the customer's identity and to make a credit determination.[40]

One commenter, however, believed that firms should have to make reasonable efforts to collect the types of information delineated in paragraph (a) of proposed Rule 2111.[41] This commenter indicated that each of those factors is essential to knowing the customer.[42] Others suggested that the term should be clarified.[43]

• FINRA's Response

format); *Keith L. DeSanto,* 52 S.E.C. 316, 317 n.1 (1995), *aff'd,* 101 F.3d 108 (2d Cir. 1996) (table format); *Jonathan G. Ornstein,* 51 S.E.C. 135, 137 (1992); *Dep't of Enforcement* v. *Griffith,* No. C01040025, 2006 NASD Discip. LEXIS 30, at *11–12 (NAC Dec. 29, 2006); *Dep't of Enforcement* v. *Puma,* No. C10000122, 2003 NASD Discip. LEXIS 22, at *12 n.6 (NAC Aug. 11, 2003).

[33] 15 U.S.C. 78*o*–3(b)(6).

[34] *See, e.g.,* Cornell Letter, *supra* note 44.

[35] *See* Charles Schwab Letter, *supra* note 47; Matthew Farley, Drinker, Biddle & Reath LLP, June 29, 2009 ("Drinker Biddle Letter"); FOLIOfn Letter, *supra* note 63; NAIBD Letter, *supra* note 63; NSCP Letter, *supra* note 35; SIFMA Letter, *supra* note 48; TD Ameritrade Letter, *supra* note 63; T. Rowe Price Letter, *supra* note 44; Wells Fargo Letter, *supra* note 63.

[36] *See* T. Rowe Price Letter, *supra* note 44.

[37] *See* Charles Schwab Letter, *supra* note 47; Drinker Biddle Letter, *supra* note 132; FOLIOfn Letter, *supra* note 63; SIFMA Letter, *supra* note 48; TD Ameritrade Letter, *supra* note 63; Wells Fargo Letter, *supra* note 63. One commenter made the same claim in the context of clearing firms and also stated that requiring a clearing firm to maintain this information as well as the introducing firm—which has the primary if not exclusive contact with the customer—would create a needless redundancy of effort, expense and information storage. *See* Drinker Biddle Letter, *supra* note 132.

[38] *See* SIFMA Letter, *supra* note 48; Wells Fargo Letter, *supra* note 63.

[39] *See* SIFMA Letter, *supra* note 48; TD Ameritrade Letter, *supra* note 63; Wells Fargo Letter, *supra* note 63.

[40] *See* FOLIOfn Letter, *supra* note 63.

[41] *See* Cornell Letter, *supra* note 44.

[42] *See* Cornell Letter, *supra* note 44.

[43] *See* Committee of Annuity Insurers Letter, *supra* note 35.

After analyzing the comments, FINRA agrees with those commenters who stated that the "know your customer" obligation should remain flexible and that the extent of the obligation generally should depend on a particular firm's business model, its customers, and applicable regulations. As a result, FINRA has modified proposed Supplementary Material .01 to FINRA Rule 2090 so that it is less prescriptive. That provision now states: "For purposes of this Rule, facts 'essential' to 'knowing the customer' are those required to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules."

Maintenance of Every Account

A few commenters focused on the "maintenance" aspect of the "know your customer" requirement.

• Comments

Two commenters stated that the "maintenance" language was both new and vague and would lead to practical implementation issues, particularly in the retirement plan marketplace.[44] The commenters stated that FINRA should provide more guidance on what it means by "maintenance" and an opportunity to comment if it keeps the term.[45]

• FINRA's Response

FINRA believes that it is self-evident that a broker-dealer must know its customers not only at account opening but also throughout the life of its relationship with customers in order to, among other things, effectively service and supervise the customer accounts. Since a broker-dealer's relationship with its customers is dynamic, FINRA does not believe that it can prescribe a period within which broker-dealers must attempt to update this information. Firms should verify the essential facts about customers at intervals reasonably calculated to prevent and detect any mishandling of customer accounts that might result from changes to the "essential facts" about the customers.[46] The reasonableness of a broker-dealer's efforts in this regard will depend on the facts and circumstances of the particular case.

Not Applicable to Every Order

At present, NYSE Rule 405(1) applies to "every order." The proposal eliminates this language.

• Comments

Two commenters argued that the proposed "know your customer" rule should, as is true currently under NYSE Rule 405(1), require due diligence as to "every order" and not simply as to every account.[47] These commenters stated that it was a mistake to focus on knowing the customer rather than knowing both the customer and the product.[48] One of these commenters did not believe that reasonable-basis suitability provides enough protection in that respect in part because the suitability rule applies only when a recommendation is made.[49]

• FINRA's Response

FINRA is not proposing to adopt the NYSE requirement to learn the essential facts relative to every order in NYSE Rule 405(1), given the application of specific order-handling rules.[50] In addition, as noted by a commenter, the reasonable-basis obligation under the suitability rule requires broker-dealers and associated persons to know the securities and strategies they recommend through performing adequate due diligence.

SUITABILITY

(Proposed FINRA Rule 2111)

Fiduciary Standard

Although FINRA did not request comment on whether fiduciary obligations should influence the suitability proposal, more than a thousand commenters raised issues involving fiduciary obligations. A brief discussion of these issues is thus warranted.

• Comments

One commenter suggested that FINRA should consider a fiduciary duty standard in addition to a suitability standard.[51] Numerous other commenters argued that FINRA should not move forward with proposed changes to the suitability rule until after policymakers (*e.g.,* Congress, the SEC, and/or FINRA) determine whether broker-dealers must comply with fiduciary obligations.[52] One commenter further posited that it would be easier for firms to implement a single, integrated change to customer care standards adopted at one time.[53]

• FINRA's Response

FINRA notes that the application of a suitability standard is not inconsistent with a fiduciary duty standard. In this regard, the SEC emphasized in one release that "investment advisers under the Advisers Act," who have fiduciary duties, "owe their clients the duty to provide only suitable investment advice * * *. To fulfill this suitability obligation, an investment adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client's financial situation and investment objectives."[54] In another release, the SEC similarly explained that "[i]nvestment advisers are fiduciaries who owe their clients a series of duties, one of which is the duty to provide only suitable investment advice."[55]

Suitability obligations constitute a material part of a fiduciary standard in the context of investment advice and recommendations. It also is important to note that case law makes clear that, under FINRA's suitability rule, "a broker's recommendations must be consistent with his customers' best interests."[56] Thus, the suitability obligations set forth in proposed Rule 2111 would not be inconsistent with the

[44] *See* Committee of Annuity Insurers Letter, *supra* note 35; Hancock, MetLife and Prudential Letter, *supra* note 51.

[45] *See* Committee of Annuity Insurers Letter, *supra* note 35; Hancock, MetLife and Prudential Letter, *supra* note 51.

[46] Broker-Dealers should note, however, that, under SEA Rule 17a–3, they must, among other things, attempt to update certain account information every 36 months regarding accounts for which the broker-dealers were required to make suitability determinations.

[47] *See* Cornell Letter, *supra* note 44; NASAA, *supra* note 34.

[48] *See* Cornell Letter, *supra* note 44; NASAA, *supra* note 34.

[49] *See* NASAA, *supra* note 34.

[50] *See supra* note 25.

[51] Rex A. Staples, General Counsel for the North American Securities Administrators Association, July 13, 2009 ("NASAA Letter").

[52] *See* Joan Hinchman, Executive Director, President, and CEO of the National Society of Compliance Professionals Inc., June 29, 2009 ("NSCP Letter"); Clifford Kirsch and Eric Arnold, Sutherland Asbill & Brennan LLP for the Committee of Annuity Insurers, June 29, 2009 ("Committee of Annuity Insurers Letter"). In addition, 435 individuals and entities made this point, among others, using one form letter ("Form Letter Type A") and 1,197 individuals did so using another form letter ("Form Letter Type B").

[53] *See* NSCP Letter, *supra* note 35.

[54] Release Nos. IC–22579, IA–1623, S7–24–95, 1997 SEC LEXIS 673, at *26 (Mar. 24, 1997) (Status of Investment Advisory Programs under the Investment Company Act of 1940). *See also Shearson, Hammill & Co.,* 42 S.E.C. 811 (1965) (finding willful violations of Section 206 of the Advisers Act when investment adviser made unsuitable recommendations).

[55] Investment Advisers Act Release No. 1406, 1994 SEC LEXIS 797, at *4 (Mar. 16, 1994) (Suitability of Investment Advice Provided by Investment Advisers).

[56] *Raghavan Sathianathan,* Securities Exchange Act Release No. 54722, 2006 SEC LEXIS 2572, at *21 (Nov. 8, 2006), *aff'd,* 304 F. App'x 883 (D.C. Cir. 2008); *see also Dane S. Faber,* Securities Exchange Act Release No. 49216, 2004 SEC LEXIS 277, at *23–24 (Feb. 10, 2004) (explaining that a broker's recommendations "must be consistent with his customer's best interests"); *Daniel R. Howard,* 55 S.E.C. 1096, 1099–1100 (2002) (same), *aff'd,* 77 F. App'x 2 (1st Cir. 2003).

addition of a fiduciary duty at some future date.[57]

Scope of the Suitability Rule

FINRA sought comment on two main issues potentially impacting the scope of the suitability rule: whether to add the term "strategy" to the rule language and whether to broaden the rule so that it reaches non-securities products. The second issue was not highlighted in the rule text. Rather, it was raised in a discussion in the *Notice* seeking comment.

Scope of the Suitability Rule/Strategies

The issue of whether the suitability rule applies to recommended strategies has been addressed previously. SEC and FINRA discussions in IMs, releases, and notices, as well as in some decisions, indicate that the current suitability rule applies to certain types of recommended strategies.

NASD IM–2310–3 (Suitability Obligations to Institutional Customers) provides in its "Preliminary Statement" that broker-dealers' "responsibilities include having a reasonable basis for recommending a particular security *or strategy,* as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made." Similarly, *Notices to Members* have stated that broker-dealers' responsibilities under Rule 2310 "include having a reasonable basis for recommending a particular security *or strategy.*"[58] Moreover, when the SEC published FINRA's Online Suitability Policy Statement, *Notice to Members* 01–23 (Apr. 2001) ("*NTM 01–23*"), in the **Federal Register**, the Commission included the following statement in the release: "The Commission notes that although [*NTM*] *01–23* does not expressly discuss electronic communications that recommend investment strategies, the NASD suitability rule continues to apply to the recommendation of investment strategies, whether that recommendation is made via electronic communication or otherwise."[59]

A number of SEC decisions also support application of the suitability rule to recommended strategies. The case often cited as standing for such a proposition is *F.J. Kaufman & Co.,* 50 S.E.C. 164 (1989), in which the SEC found that the respondent violated NASD Rule 2310 by recommending an unsuitable strategy to customers. A number of Commission decisions issued after *Kaufman* also lend support for applying the suitability rule to recommended strategies in certain situations. Many of these cases involved recommendations to purchase securities on margin (which can be viewed as a strategy).[60]

The proposed suitability rule explicitly covers recommended strategies. The commenters' views on the inclusion of the term were varied.

• Comments

A number of commenters supported the addition of the term to the rule text.[61] Some commenters requested that FINRA make clear in the supplementary material that the term "strategy" should be interpreted broadly and include recommendations to hold an investment.[62] Some of these commenters also believed that firms should have an affirmative duty to review portfolios that are transferred into a firm and that the lack of a recommendation to make any changes to the portfolio effectively constitutes an implicit recommendation to retain what is in the account.[63]

Other commenters supported the inclusion of the term strategy but asked FINRA to clarify that the suitability rule would apply only to recommended "strategies *resulting* in the purchase, sale or exchange of a security or securities"[64] or where there is a "reasonable nexus between the recommended investment strategy and a securities transaction in furtherance of the recommended strategy."[65] Other commenters stated that FINRA should define or clarify the term "strategy."[66] One of these commenters believed that, without a definition, there would be confusion among firms and FINRA examiners regarding whether all asset allocation programs and "buy and hold" recommendations should be viewed as strategies.[67]

A number of commenters opposed the inclusion of the term "strategy."[68] However, one of these commenters stated that, if FINRA includes the term in the final proposal, FINRA should except from the rule's coverage any information determined to be "investment education" under the Employee Retirement Income Security Act ("ERISA").[69]

• FINRA's Response

FINRA agrees that the term "strategy" should be included in the rule language and that, in general, it should be interpreted broadly. For instance, FINRA rejects the contention that the rule should only cover a recommended

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[57] FINRA notes as well that the suitability rule is only one of many FINRA business-conduct rules with which broker-dealers and their associated persons must comply. Many FINRA rules prohibit, limit, or require disclosure of conflicts of interest. Broker-dealers and their associated persons, for instance, must comply with just and equitable principles of trade, standards for communications with the public, order-handling requirements, fair-pricing standards, and various disclosure obligations regarding research, trading, compensation, margin, and certain sales and distribution activity, among others, in addition to suitability obligations.

[58] *See Notice to Members* 96–32, 1996 NASD LEXIS 51, at *2 (May 1996); *see also Notice to Members* 05–68, 2005 NASD LEXIS 44, at *11 (Oct. 2005) (stating that members and their associated persons "should perform a careful analysis to determine whether liquefying home equity [to facilitate the purchase of securities] is a suitable strategy for an investor"); *Notice to Members* 04–89, 2004 NASD LEXIS 76, at *7 (Dec. 2004) (same). (*Change to footnote made per e-mail from James Wrona, Associate Vice President and Associate General Counsel, FINRA, to Bonnie Gauch, Special Counsel, Division of Trading and Markets, Commission, dated August 12, 2010.*)

[59] *See* Securities Exchange Act Release No. 44178, 2001 SEC LEXIS 731, at *28–29 (April 12, 2001), 66 FR 20697, 20702 (April 24, 2001) (Notice of Filing and Immediate Effectiveness of FINRA's Online Suitability Policy Statement).

[60] *See, e.g., Jack H. Stein,* Securities Exchange Act Release No. 47335, 2003 SEC LEXIS 338, at *15 (Feb. 10, 2003); *Justine S. Fischer,* 53 S.E.C. 734 (1998); *Stephen T. Rangen,* 52 S.E.C. 1304, 1307–1308 (1997); *Arthur J. Lewis,* 50 S.E.C. 747, 748–50 (1991).

[61] *See* Barbara Black, Director of the Corporate Law Center of the University of Cincinnati College of Law, and Jill I. Gross, Director of the Investor Rights Clinic of the Pace University School of Law ("Corporate Law Center & Investor Rights Clinic"), June 29, 2009; Peter J. Harrington, Christine Lazaro & Lisa A. Catalano, Securities Arbitration Clinic at St. John's University, June 25, 2009 ("St. John's Letter"); William A. Jacobson and Sang Joon Kim, Cornell Securities Law Clinic, June 27, 2009 ("Cornell Letter"); Sarah McCafferty, Vice President and Chief compliance Officer at T.RowePrice, June 29, 2009 ("T.RowePrice Letter"); Peter J. Mougey and Kristian P. Kraszewski, Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor P.A., June 29, 2009 ("Mougey and Kraszewski Letter"); Daniel C. Rome, General Counsel of Taurus Compliance Consulting LLC, June 29, 2009 ("Taurus Letter").

[62] *See* Cornell Letter, *supra* note 44; Mougey and Kraszewski Letter, *supra* note 44; St. John's Letter, *supra* note 44.

[63] *See* Mougey and Kraszewski Letter, *supra* note 43; St. John's Letter, *supra* note 44.

[64] *See* Bari Havlik, SVP and Chief Compliance Officer for Charles Schwab & Co., June 29, 2009 ("Charles Schwab Letter").

[65] *See* Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, June 29, 2000 ("SIFMA Letter"); NSCP Letter, *supra* note 35.

[66] *See* NSCP Letter, *supra* note 35. A number of commenters stated that FINRA should eliminate the term strategy from the rule but argued that, if FINRA continues to use it, FINRA needed to clarify what the term means. *See* Committee of Annuity Insurers Letter, *supra* note 35; James Livingston, President and CEO of National Planning Holdings, Inc., June 29, 2009 ("National Planning Holdings"); Stephanie L. Brown, Managing Director and General Counsel for LPL Financial Corporation, June 29, 2009 ("LPL Letter").

[67] *See* NSCP Letter, *supra* note 35.

[68] *See* LPL Letter, *supra* note 48; Committee of Annuity Insurers Letter, *supra* note 34; Clifford E. Kirsch, Sutherland Asbill & Brennan LLP on behalf of John Hancock Life Insurance Co., MetLife Inc., and the Prudential Insurance Co. of America, June 29, 2009 ("Hancock, MetLife and Prudential Letter"); National Planning Holdings, *supra* note 49.

[69] *See* Hancock, MetLife and Prudential Letter, *supra* note 51 (citing 29 CFR 2509.96–1(d)).

strategy if it results in a transaction. As with the current suitability rule, application of the proposed rule would be triggered when the broker-dealer or associated person recommends the security or strategy regardless of whether the recommendation results in a transaction.[70] The term "strategy," moreover, would cover *explicit* recommendations to hold a security or securities. The rule recognizes that customers may rely on members' and associated persons' investment expertise and knowledge, and it is thus appropriate to hold members and associated persons responsible for the recommendations that they make to customers, regardless of whether those recommendations result in transactions or generate transaction-based compensation.

In regard to the comment concerning *implicit* recommendations on portfolios transferred to a firm, FINRA notes that nothing in the current rule proposal is intended to change the longstanding application of the suitability rule on a recommendation-by-recommendation basis. In limited circumstances, FINRA and the SEC have recognized that implicit recommendations can trigger suitability obligations. For example, FINRA and the SEC have held that associated persons who effect transactions on a customer's behalf without informing the customer have implicitly recommended those transactions, thereby triggering application of the suitability rule.[71] The rule proposal is not intended to broaden the scope of *implicit* recommendations.

As discussed in Item 3 of this rule filing, FINRA also proposes to explicitly exempt from the rule's coverage certain categories of educational material as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities. FINRA believes that it is important to encourage broker-dealers and associated persons to freely provide educational material and services to customers. As one commenter explained, the U.S. Department of Labor provided a similar exemption from some requirements under ERISA.[72]

Scope of the Suitability Rule/Non-Securities Products

The current suitability rule and the proposed new suitability rule cover recommendations involving securities. In the *Notice* seeking comment, however, FINRA asked whether the suitability rule should cover recommendations of non-securities products made in connection with the firm's business. This issue generated the greatest number of comments, most of which were against extending the rule's reach.

• Comments

Some commenters favored broadening the suitability rule so that it covers non-securities products.[73] One commenter stated that the expansion was needed because broker-dealers market more than just securities and oftentimes customers do not understand that they may be afforded less protection when purchasing non-securities products.[74] Another commenter stated that it would be unreasonable for a firm to allow a non-securities recommendation that was inconsistent with a customer's suitability profile.[75] Yet another commenter believed that broker-dealers implicitly already have similar obligations but favored explicitly applying the suitability rule to non-securities products.[76] According to this commenter, broker-dealers fail to observe the high standards of commercial honor and just and equitable principles of trade required by FINRA Rule 2010 if they recommend any unsuitable financial product, service, or strategy to their customers.[77] This commenter argued that the proposal was not an expansion of broker-dealer obligations; rather the proposal would make explicit what FINRA's rules have consistently required from broker-dealers and associated persons.[78] The commenter supported a revision of proposed Rule 2111 to incorporate an explicit suitability obligation that is not limited to securities.[79]

The vast majority of commenters, however, were against applying the suitability rule to non-securities products.[80] Some argued that FINRA did not have jurisdiction over non-securities products.[81] Some argued against the expansion because they claimed there is no evidence of abuse resulting from recommendations involving non-securities products.[82] Some commenters stated that such action is unnecessary because the states and federal regulators, and in some instances other self-regulatory organizations, already regulate many non-securities products and services (*e.g.,* insurance, real estate, investment advisers, futures products, etc.).[83] Others claimed that FINRA was ill-suited to regulate non-securities products because it has no expertise

[70] *See, e.g., Dist. Bus. Conduct Comm.* v. *Nickles,* Complaint No. C8A910051, 1992 NASD Discip. LEXIS 28, at *18 (NBCC Oct. 19, 1992) (holding that suitability rule "applies not only to transactions that registered persons effect for their clients, but also to any recommendations that a registered person makes to his or her client").

[71] *See, e.g., Rafael Pinchas,* 54 S.E.C. 331, 341 n.22 (1999) ("Transactions that were not specifically authorized by a client but were executed on the client's behalf are considered to have been implicitly recommended within the meaning of the NASD rules."); *Paul C. Kettler,* 51 S.E.C. 30, 32 n.11 (1992) (stating that transactions broker effects for a discretionary account are implicitly recommended).

[72] *See* Hancock, MetLife and Prudential Letter, *supra* note 51 (citing 29 CFR 2509.96–1(d)).

[73] *See* Mougey and Kraszewski Letter, *supra* note 44; Taurus Letter, *supra* note 44.

[74] *See* Mougey and Kraszewski Letter, *supra* note 44.

[75] *See* Taurus Letter, *supra* note 44.

[76] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44.

[77] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44.

[78] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44.

[79] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44.

[80] *See, e.g.,* Michael Berenson, Morgan, Lewis & Bockius LLP on behalf of American Equity Life Insurance Company, June 23, 2009 ("AELIC Letter"); Charles Schwab Letter, *supra* note 47; Committee of Annuity Insurers Letter, *supra* note 35; John M. Damgard, President of the Futures Industry Association, June 29, 2009 ("FIA Letter"); Form Letter Type A, *supra* note 35; Form Letter Type B, *supra* note 35; Hancock, MetLife and Prudential Letter, *supra* note 51; James L. Harding, James L. Harding & Associates, Inc., July 1, 2009 ("Harding Letter"); Mike Hogan, President and CEO of FOLIOfn Investments, Inc., June 29, 2009 ("FOLIOfn Letter"); Ronald C. Long, Director of Regulatory Affairs for Wells Fargo Advisors, LLC, June 29, 2009 ("Wells Fargo Letter"); LPL Letter, *supra* note 51; John S. Markle, Deputy General Counsel for TD Ameritrade, June 29, 2009 ("TD Ameritrade Letter"); NSCP Letter, *supra* note 35; Lisa Roth, National Ass'n of Independent Broker-Dealers, Inc., June 29, 2009 ("NAIBD Letter"); Thomas W. Sexton, Senior Vice President & General Counsel for the National Futures Association, June 29, 2009 ("NFA Letter"), SIFMA Letter, *supra* note 48; T.RowePrice Letter, *supra* note 44; Robert R Carter and David A Stertzer, Association for Advanced Life Underwriting, June 29, 2009 ("AALU Letter"); Alan J Cyr, Cyr & Cyr Insurance Services, June 26, 2009 ("Cyr & Cyr Insurance Services Letter"); F. John Millette, IMG Financial Group, June 23, 2009 ("IMG Financial Group Letter"); Neal Nakagiri, NPB Financial Group, LLC, June 2, 2009 ("NPB Financial Group Letter"); Richard C. Orvis, Principal Life Insurance Co., June 23, 2009 ("Principal Life Insurance Co. Letter").

[81] *See, e.g.,* Committee of Annuity Insurers Letter, *supra* note 35; FOLIOfn Letter, *supra* note 63; Form Letter Type A, *supra* note 35; Form Letter Type B, *supra* note 35; Hancock, MetLife and Prudential Letter, *supra* note 51; LPL Letter, *supra* note 49; NSCP Letter, *supra* note 35; T.RowePrice Letter, *supra* note 44.

[82] *See, e.g.,* AALU Letter, *supra* note 63; AELIC Letter, *supra* note 63; Cyr & Cyr Insurance Services Letter, *supra* note 60; Principal Life Insurance Co. Letter, *supra* note 60.

[83] *See, e.g.,* AELIC Letter, supra note 63; Committee of Annuity Insurers Letter, *supra* note 35; FIA Letter, *supra* note 63; Form Letter Type A, *supra* note 35; Form Letter Type B, *supra* note 35; Hancock, MetLife and Prudential Letter, *supra* note 51; Michael T. McRaith, Illinois Department of Insurance Letter, June 29, 2009; NAIBD Letter, *supra* note 63; NFA Letter, *supra* note 63; NSCP Letter, *supra* note 35; SIFMA Letter, *supra* note 48.

outside securities issues.[84] A few argued that adoption of an enhanced suitability rule would create confusion regarding whether a recommendation is made "in connection with a firm's business."[85]

• FINRA's Response

With the possible exception of potentially duplicative regulation, which FINRA believes could be addressed in any further expansion of the reach of the rule, FINRA does not agree with the commenters' reasoning against extending the scope of the suitability rule. FINRA acknowledges, however, that future developments in regulatory restructuring could impact any such proposal. FINRA emphasizes, moreover, that the proposed new suitability rule (including the explicit coverage of recommended strategies and expanded list of the types of information that members must seek to gather and analyze) and the proposed "Know Your Customer" rule together provide enhanced protection to investors. Consequently, FINRA will not include explicit references to non-securities products in the rule at this time.

Scope of the Suitability Rule/ Clarification of the Term "Recommendation"

Consistent with the current suitability rule, the proposed new rule does not define the term "recommendation." FINRA received a number of comments regarding the term.

• Comments

Some commenters asked FINRA to define the term "recommendation."[86] One commenter believed that FINRA's failure to define "recommended transaction" will make it difficult for firms to distinguish recommended transactions from "discussed" and/or "reviewed" transactions.[87] This commenter stated that the "current compliance rule of thumb matches customer action within a measured period of time after information is provided to a customer as a test of whether any resulting transaction was 'recommended.' "[88] The commenter believes that "the discussion in *NTM 01–23* provides a good foundation upon which FINRA can base the definition."[89] Another commenter asked that FINRA reaffirm the principles discussed in *NTM 01–23* regarding the term "recommendation."[90] Other commenters argued that the term should be defined to include recommendations to hold securities.[91]

• FINRA's Response

The determination of the existence of a recommendation has always been based on the facts and circumstances of the particular case and, therefore, the fact of such action having taken place is not susceptible to a bright line definition.[92] As two commenters noted, however, FINRA announced several guiding principles in *NTM 01–23* regarding whether a communication constitutes a recommendation. In general, those guiding principles remain relevant.

For instance, FINRA stated that a communication's content, context, and presentation are important aspects of the inquiry. In addition, the more individually tailored the communication is to a particular customer or customers about a specific security or strategy, the more likely the communication will be viewed as a recommendation. FINRA also explained that a series of actions that may not constitute recommendations when viewed individually may amount to a recommendation when considered in the aggregate. FINRA stated, moreover, that it makes no difference whether the communication was initiated by a person or a computer software program. Finally, FINRA noted the relevance of determining whether a reasonable person would view the communication as a recommendation. Thus, for example, FINRA explained that a broker could not avoid suitability obligations through a disclaimer where—given its content, context, and presentation—the particular communication reasonably would be viewed as a recommendation.[93]

These guiding principles, together with numerous litigated decisions and the facts and circumstances of any particular case, inform the determination of whether the communication is a recommendation for purposes of FINRA's suitability rule.[94] FINRA believes that this guidance and these precedents allow broker-dealers to fundamentally understand what communications likely do or do not constitute recommendations.

It also is important to emphasize that both the current and proposed suitability rules require that a recommendation be suitable when made. Firms may have different methods of tracking recommendations for a variety of reasons, but the main suitability obligation is not dependent on whether and, if so, where and how, a transaction occurs.[95]

Finally, as noted above, the proposed rule would capture explicit recommendations to hold securities as a result of FINRA's elimination of the "purchase, sale or exchange" language and the addition of the term "strategy." Accordingly, there is no reason to define "recommendation" to include recommendations to hold securities.

Information Gathering

The proposal discussed in the *Notice* seeking comment made two changes to the type of information that firms and associated persons had to attempt to gather and analyze as part of their suitability obligation. First, the proposal would have required the firm and associated person to consider information known by the firm or associated person. Second, the proposal included an expanded list of information that members and associated persons would have to

[84] *See, e.g.,* AALU Letter, *supra* note 63; Committee of Annuity Insurers Letter, *supra* note 35; Wells Fargo Letter, *supra* note 63.

[85] *See, e.g.,* AELIC Letter, *supra* note 63.

[86] *See* Barry D. Estell, Attorney at Law, June 24, 2009 ("Estell Letter"); FOLIOfn Letter, *supra* note 63; Mougey and Kraszewski Letter, *supra* note 44.

[87] *See* FOLIOfn Letter, *supra* note 63.

[88] *See* FOLIOfn Letter, *supra* note 63.

[89] *See* FOLIOfn Letter, *supra* note 63.

[90] TD Ameritrade Letter, *supra* note 63.

[91] *See* Estell Letter, *supra* note 69; Mougey and Kraszewski Letter, *supra* note 44.

[92] FINRA has stated that "defining the term 'recommendation' is unnecessary and would raise many complex issues in the absence of specific facts of a particular case." Securities Exchange Act Release No. 37588, 1996 SEC LEXIS 2285, at *29 (Aug. 20, 1996), 61 FR. 44100, 44107 (Aug. 27, 1996) (Notice of Filing and Order Granting Accelerated Approval of NASD's Interpretation of its Suitability Rule).

[93] In the same vein, it is important to note that a customer's acquiescence or desire to engage in a transaction does not relieve a broker-dealer or associated person of the responsibility to make only suitable recommendations. *See, e.g., Clinton H. Holland, Jr.,* 52 S.E.C. 562, 566 (1995) ("Even if we conclude that Bradley understood Holland's recommendations and decided to follow them, that does not relieve Holland of his obligation to make reasonable recommendations."), *aff'd,* 105 F.3d 665 (9th Cir. 1997) (table format); *John M. Reynolds,* 50 S.E.C. 805, 809 (1991) (regardless of whether customer wanted to engage in aggressive and speculative trading, representative was obligated to abstain from making recommendations that were inconsistent with the customer's financial condition); *Eugene J. Erdos,* 47 S.E.C. 985, 989 (1983) ("[W]hether [the customer] considered the transactions * * * suitable is not the test for determining the propriety of [the registered representative's] conduct."), *aff'd,* 742 F.2d 507 (9th Cir. 1984); *Dep't of Enforcement* v. *Bendetsen,* No. C01020025, 2004 NASD Discip. LEXIS 13, at *12 (NAC Aug. 9, 2004) ("[A] broker's recommendations must serve his client's best interests and that the test for whether a broker's recommendation is suitable is not whether the client acquiesced in them, but whether the broker's recommendations were consistent with the client's financial situation and needs.").

[94] To the extent that past *Notices to Members, Regulatory Notices,* case law, etc., do not conflict with proposed new rule requirements or interpretations thereof, they remain potentially applicable, depending on the facts and circumstances of the particular case.

[95] *See Nickles,* 1992 NASD Discip. LEXIS 28, at *18.

attempt to gather and analyze when making recommendations.

Information Gathering/Information Known by the Firm

The proposal discussed in the *Notice* would have required members and associated persons to consider all information about the customer that was "known by the member or associated person."

• Comments

Some commenters supported requiring firms and brokers to analyze information known by the firm regardless of how the firm learned of the information.[96] However, other commenters were opposed to this requirement.[97] Some were opposed because of the difficulty they believed it would cause for firms with multiple business lines.[98] According to these commenters, customers may provide information for a variety of different purposes (*e.g.,* banking, insurance, or securities transactions) to different employees working in different departments and recording the information on separate systems, and a single broker may not have access to all of that information.[99]

Other commenters opposed the language on the basis that it might require associated persons to capture and consider personal information that may not be relevant to investment decisions and that clients may not want captured in a system or shared with a broader audience (especially when the associated person has intimate knowledge of a client through a family relationship or friendship).[100] According to the commenters, examples may include a diagnosed illness, pending divorce or separation, pending legal action, or other personal problems.[101] Finally, some commenters believed that such a requirement could be unfair to associated persons in situations where firms are aware of information about customers but do not pass it along to the associated persons.[102]

• FINRA's Response

FINRA has modified the proposal and no longer refers to facts "known by the member or associated person." The current proposal requires the member or associated person to have reasonable grounds to believe the recommendation is suitable based on "information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile, including, but not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation."

"Reasonable diligence" is that level of effort that, based on the facts and circumstances of the particular case, provides the member or associated person with sufficient information about the customer to have reasonable grounds to believe that the recommended security or strategy is suitable. The level of importance of each category of customer information may vary depending on the facts and circumstances of the particular case. However, members and associated persons must use reasonable diligence to gather and analyze the customer information and may only make a recommendation if they have reasonable grounds to believe the recommendation is suitable. In this regard, failing to use reasonable diligence to gather the information or basing a recommendation on inadequate information would violate customer-specific suitability, which requires a broker-dealer to have a reasonable basis to believe a recommendation is suitable for the particular investor at issue.

Apart from the new "reasonable diligence" language, the modified proposal also alters the wording at the end of paragraph (a) of the proposed rule. Instead of requiring members and associated persons to consider "any other information the member or associated person considers to be reasonable," the modified proposal requires them to consider "any other information the customer may disclose to the member or associated person in connection with" the recommendation. In light of some of the comments noted above, FINRA believes it is important to tie this customer information to possible investment decisions.

Information Gathering/Additional Information

The proposal expands the explicit list of types of information that broker-dealers and associated persons have to attempt to gather and analyze. At present, the suitability rule requires that broker-dealers and associated persons attempt to gather information about and analyze the customer's other security holdings, financial situation and needs, financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such member or associated person in making recommendations to the customer. FINRA expanded that list to include the customer's age, investment experience, investment time horizon, liquidity needs, and risk tolerance.

• Comments

Some commenters applauded FINRA for placing a clear affirmative duty on firms to make reasonable efforts to gather a more comprehensive and specific list of facts about the customer prior to making a recommendation.[103] These commenters believed that the investing public will benefit because broker-dealers will consider a larger number of consistent criteria.[104]

A few other commenters, while agreeing that such information is relevant in some situations, stated that obtaining each specified category of information may not be warranted on every occasion.[105] These commenters requested that FINRA build flexibility into the rule and not mandate that the member seek to obtain these new categories of information for every recommended transaction.[106] According to these commenters, broker-dealers should have discretion to determine what customer information is relevant to the suitability determination associated with each recommended transaction.[107] If FINRA does require firms to obtain and capture this information, these commenters also asked FINRA to establish an effective date for the new rule that recognizes the

[96] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44; St. John's Letter, *supra* note 44; Taurus Letter, *supra* note 44.

[97] *See* Charles Schwab Letter, *supra* note 47; Committee of Annuity Insurers Letter, *supra* note 35; FOLIOfn Letter, *supra* note 63; LPL Letter, *supra* note 49; NSCP Letter, *supra* note 35; SIFMA Letter, *supra* note 47; TD Ameritrade Letter, *supra* note 63.

[98] *See* Charles Schwab Letter, *supra* note 47; FOLIOfn Letter, *supra* note 63; NSCP Letter, *supra* note 35; SIFMA Letter, *supra* note 48; TD Ameritrade Letter, *supra* note 63.

[99] *See* Charles Schwab Letter, *supra* note 47; SIFMA Letter, *supra* note 48.

[100] *See* Committee of Annuity Insurers Letter, *supra* note 35; National Planning Holdings, *supra* note 49.

[101] *See* Committee of Annuity Insurers Letter, *supra* note 35; National Planning Holdings, *supra* note 49.

[102] *See* LPL Letter, *supra* note 49; SIFMA Letter, *supra* note 48.

[103] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44; Mougey and Kraszewski Letter, *supra* note 44; St. John's Letter, *supra* note 44; T.RowePrice Letter, *supra* note 44.

[104] *See* St. John's Letter, *supra* note 44; Mougey and Kraszewski Letter, *supra* note 44.

[105] *See* Charles Schwab Letter, *supra* note 47; SIFMA Letter, *supra* note 48; TD Ameritrade Letter, *supra* note 63; Wells Fargo Letter, *supra* note 63.

[106] *See* Charles Schwab Letter, *supra* note 47; SIFMA Letter, *supra* note 48; TD Ameritrade Letter, *supra* note 63; Wells Fargo Letter, *supra* note 63.

[107] *See* Charles Schwab Letter, *supra* note 47; SIFMA Letter, *supra* note 48; TD Ameritrade Letter, *supra* note 63; Wells Fargo Letter, *supra* note 63.

difficulty associated with developing, modifying, and implementing forms and systems to request and capture the proposed new categories of information.[108]

Other commenters more strongly objected to the proposed expansion of the list of items that broker-dealers must attempt to gather and analyze.[109] One commenter argued that factors such as a customer's investment experience, time horizon, and risk tolerance are ones to be considered when reviewing a customer's portfolio as a whole, not individual trades.[110] According to this commenter, requiring consideration of such factors on a trade-by-trade basis will prevent customers from creating a diverse portfolio made up of securities with different levels of liquidity, risk, and time horizons.[111] This commenter also stated that requiring firms to attempt to gather information about a customer's "other investments" would be difficult because it would require an associated person to have a complete view of a customer's entire portfolio.[112] Another commenter went further and stated that the current list of items in Rule 2310 should be abolished.[113] The commenter stated that "FINRA should adopt a rule that states that broker dealers should collect sufficient data and perform the analysis that it, in its professional judgment, deems reasonably necessary to provide the services it offers and advertises to consumers."[114] If that cannot be achieved, the commenter recommends limiting the information to that discussed in SEA Rule 17a–3.[115] This commenter also argued that FINRA should detail exactly how firms are required to use each piece of information that FINRA requires firms to gather.[116]

Another commenter stated that FINRA should maintain a standard approach to the terminology used in relation to this aspect of the rule.[117] As an example, the commenter noted that the rule proposal uses the term "other investments," while FINRA Rule 2330 covering deferred variable annuities uses "existing assets (including investment and life insurance holdings)."[118] The commenter believed that "other investments" is overly broad and that FINRA should use the term currently used in Rule 2330.[119]

Finally, one commenter argued that money market mutual funds be exempted from all or some of the requirements to gather information when making recommendations.[120] According to the commenter, a current exemption from some information gathering for transactions in money market mutual funds should continue or be expanded in the proposed rule.[121]

• FINRA's Response

Under the current suitability rule, broker-dealers must attempt to gather information on and analyze the customer's other holdings, financial situation and needs, financial status, tax status, investment objectives, and such other information used or considered to be reasonable by the firm or associated person in making recommendations to the customer. The expanded information in the proposed rule includes the customer's age, investment experience, investment time horizon, liquidity needs, and risk tolerance. FINRA cannot dictate exactly how firms should use each piece of information. As discussed above, the level of importance of each category of customer information (not only those in the expanded list) may vary depending on the facts and circumstances of the particular case. However, failing to use reasonable diligence to gather the information or basing a recommendation on inadequate information would violate customer-specific suitability.

FINRA declines one commenter's request to exempt money market mutual funds from all or some of the requirements to gather information when making recommendations. By way of background, the original suitability rule (currently paragraph (a) of NASD Rule 2310) required firms and brokers to have reasonable grounds to believe that the recommendation to purchase, sell, or exchange any security is suitable based upon the facts, if any, disclosed by the customer as to "his other security holdings and as to his financial situation and needs." In 1990, the SEC approved amendments that created a second information-gathering requirement (currently paragraph (b) of NASD Rule 2310).[122] The new paragraph added in 1990 required firms to make reasonable efforts to also obtain the customer's financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such member or associated person in making recommendations to the customer. Transactions involving money market mutual funds were exempted from the requirement under the new paragraph. However, transactions involving money market mutual funds were not exempted from the original suitability requirements under paragraph (a). FINRA believes that recommended money market mutual funds should be subject to the same information-gathering requirements as other recommended securities. That is especially true in light of the problems experienced by the Reserve Primary Fund in late 2008.[123]

Institutional Customer

At present, IM–2310–3 provides a limited exemption from the customer-specific obligation when dealing with institutional customers in certain situations. The proposal continues to provide an exemption, but it adds a requirement that institutional customers provide affirmative acknowledgement of certain aspects of their relationship with the broker-dealer and modifies the definition of institutional customer.

Institutional Customer/Affirmative Acknowledgement Regarding Surrendering Rights

As with the current suitability rule, the proposal provides an exemption from customer-specific suitability regarding institutional customers if the broker-dealer or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently and is exercising independent judgment in evaluating the member's or associated person's recommendations. However, the proposal discussed in the *Notice* seeking comment added as a third requirement that the institutional customer must affirmatively indicate that it is willing to forego the protection

[108] *See* Charles Schwab Letter, *supra* note 47; LPL Letter, *supra* note 49; SIFMA Letter, *supra* note 48; Wells Fargo Letter, *supra* note 63.

[109] *See* FOLIOfn Letter, *supra* note 63.

[110] *See* LPL Letter, *supra* note 49.

[111] *See* LPL Letter, *supra* note 49.

[112] *See* LPL Letter, *supra* note 49.

[113] *See* FOLIOfn Letter, *supra* note 63.

[114] *See* FOLIOfn Letter, *supra* note 63.

[115] *See* FOLIOfn Letter, *supra* note 63.

[116] *See* FOLIOfn Letter, *supra* note 63.

[117] *See* National Planning Holdings, *supra* note 49.

[118] *See* National Planning Holdings, *supra* note 49.

[119] *See* National Planning Holdings, *supra* note 49.

[120] *See* Tamara K. Salmon, Senior Associate Counsel for the Investment Company Institute, June 29, 2009 ("ICI Letter").

[121] *See* ICI Letter, *supra* note 103.

[122] *See* Securities Exchange Act Release No. 27982, 1990 SEC LEXIS 795 (May 2, 1990) (Order Approving Rule Change to Obtain Information Pertinent to Customer Account).

[123] As the SEC explained, "On Sept. 15, 2008, the Reserve Primary Fund, which held $785 million in Lehman-issued securities, became illiquid when the fund was unable to meet investor requests for redemptions. The following day, the Reserve Fund declared it had 'broken the buck' because its net asset value had fallen below $1 per share." *http://www.sec.gov/news/press/2010/2010-16.htm.*

of the customer-specific obligation of the suitability rule.

• Comments

A number of commenters stated that requiring institutional customers to affirmatively acknowledge that they are giving up rights is impractical and will render the institutional exemption ineffective.[124] According to these commenters, this requirement is unnecessary in light of the other two conditions (that the customer be capable of evaluating risks and is exercising independent judgment).[125] The commenters also stated that, because institutional clients are highly unlikely to affirmatively forego suitability protections for commercial reasons, this new requirement will have the practical effect of negating the exemption.[126]

• FINRA's Response

FINRA has modified the proposed exemption in a way that should alleviate commenters' concerns while providing the necessary protection to institutional customers. The revised exemption eliminates the requirement that institutional customers affirmatively indicate that they are giving up suitability protections and focuses on the two main conditions discussed in the current exemption. The revised exemption, however, does require institutional customers to affirmatively indicate that they are exercising independent judgment.

Institutional Customer/Change in Definition

The proposal harmonizes the definition of "institutional customer" in the suitability rule with the more common definition of "institutional account" in NASD Rule 3110(c)(4) [proposed FINRA Rule 4512(c)]. As a result, the monetary threshold for an institutional customer would increase from the current $10 million invested in securities and/or under management to $50 million in assets. In addition, unlike the current exemption, a natural person could qualify as an institutional customer under the proposal.

• Comments

Some commenters supported the change in definition.[127] One commenter stated further that consistent standards produce more efficient, effective, and clear regulation that is beneficial to investors, regulators, and market participants alike.[128] Other commenters, however, disagreed, arguing that the definition of $10 million invested in securities and/or under management in current IM–2310–3 is a more appropriate standard for purposes of the institutional account suitability exemption and should be retained in the new rule rather than referencing the Rule 3110(c)(4) standard of at least $50 million in total assets.[129] According to one commenter, many highly sophisticated institutional brokerage customers would not satisfy the $50 million dollar asset threshold but would not need the protection of the suitability rule.[130]

Another commenter who favored keeping the current standard stated that, if FINRA believes a different standard should be used for uniformity, FINRA should use the definition in NASD Rule 2211(a)(3) (Communications with the Public) rather than the one in NASD Rule 3110(c)(4).[131] Under NASD Rule 2211, institutional sales material may be distributed only to "institutional investors," defined to include several categories of persons, including those identified in NASD Rule 3110(c)(4). It also adds the following entities: Employee benefit plans meeting the requirements of Section 403(b) or Section 457 of the Internal Revenue Code with at least 100 participants, qualified plans with at least 100 participants, and governmental entities or subdivisions thereof. This commenter also suggested that FINRA should make the standard a rebuttable presumption against determining that an entity that is outside the list of plans identified above is an institutional customer.[132]

Finally, one commenter argued that there should not be any exemption for institutional customers.[133] According to this commenter, many institutional customers, even those with $50 million in assets, are not particularly sophisticated about complex securities and need the protections of the suitability rule.[134]

• FINRA's Response

While any standard is imperfect, FINRA believes that it is important to use the definition in Rule 3110(c)(4) for consistency and because of its higher monetary threshold. FINRA does not believe that it is appropriate to use the much broader definition in NASD Rule 2211(a)(3), which defines "institutional investor" for purposes of the rules governing communications with the public. Communications that are distributed or made available only to institutional investors qualify as institutional sales material, which is not subject to the same content, principal approval and filing requirements as communications that are distributed or made available to retail investors. The communication rules' requirements, while important, serve a different purpose than the sales-practice protections that the suitability rule provides when a broker-dealer recommends a security to a customer.

FINRA understands the concern that even some institutional customers with $50 million in assets might be unsophisticated about complex securities and need the protections of the suitability rule. However, the exemption would not apply in that circumstance. Again, the broker-dealer or associated person must have a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently and, under the modified proposal, the customer must affirmatively state that it is exercising independent judgment in evaluating the recommendations.

Institutional Customer/Eliminating Detailed Discussion From IM–2310–3

Although the focus is the same, the proposed institutional exemption is considerably shorter in length than the current one. Its brevity generated one comment.

• Comments

One commenter viewed the new, abbreviated institutional investor discussion in the proposal as a "box check" waiver that provides less protection than the detailed discussion in IM–2310–3 of considerations for determining whether the exemption should apply.[135]

• FINRA's Response

The proposed institutional investor discussion, while shorter than the

[124] *See* Hancock, MetLife and Prudential Letter, *supra* note 51; NAIBD Letter, *supra* note 63; NSCP Letter, *supra* note 35; SIFMA Letter, *supra* note 48; Wells Fargo Letter, *supra* note 63.

[125] *See* NAIBD Letter, *supra* note 63; SIFMA Letter, *supra* note 48; Wells Fargo Letter, *supra* note 63.

[126] *See* Hancock, MetLife and Prudential Letter, *supra* note 51; NAIBD Letter, *supra* note 63; NSCP Letter, *supra* note 35; SIFMA Letter, *supra* note 48; Wells Fargo Letter, *supra* note 63.

[127] *See* SIFMA Letter, *supra* note 48; Wells Fargo Letter, *supra* note 63.

[128] *See* SIFMA Letter, *supra* note 48.

[129] *See* Hancock, MetLife and Prudential Letter, *supra* note 51; NAIBD Letter, *supra* note 63; NSCP Letter, *supra* note 35.

[130] *See* NAIBD Letter, *supra* note 63.

[131] *See* Hancock, MetLife and Prudential Letter, *supra* note 51.

[132] *See* Hancock, MetLife and Prudential Letter, *supra* note 51. In addition, one commenter stated that the exemption should apply to all suitability obligations and should not, as previously had been the case, be limited to customer-specific suitability. *See* SIFMA Letter, *supra* note 48. FINRA believes that the exemption should remain focused on customer-specific suitability. For instance, it remains important that brokers understand the securities they recommend and that those securities are appropriate for at least some investors.

[133] *See* Mougey and Kraszewski Letter, *supra* note 44.

[134] *See* Mougey and Kraszewski Letter, *supra* note 44.

[135] *See* NASAA Letter, *supra* note 34.

current version in IM–2310–3, contains certain stricter standards. In addition to the two main considerations used in both versions, the proposal includes an increased monetary threshold that certain institutions must meet to qualify for the exemption and, even more important, a requirement that the institution affirmatively indicate that it is independently evaluating the firm's recommendations.

Supplementary Material

The Consolidated FINRA Rulebook uses supplementary material to discuss certain aspects of a rule's requirements in greater detail. However, a number of commenters raised issues regarding the supplementary material.

• Comments

A number of commenters supported codifying various interpretations of the suitability rule.[136] Some commenters, however, believed that FINRA should modify some of those interpretations. For instance, one commenter questioned the "three-pronged approach" to suitability discussed in Supplementary Material .02, which codifies discussions in IMs and case law about reasonable-basis suitability, customer-specific suitability, and quantitative suitability. This commenter suggested that the approach created new standards that provide less protection to customers.[137] This commenter took particular issue with reasonable-basis suitability, which requires a broker-dealer to have a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least some investors.[138] The commenter believed that a member's familiarity with a product should be presumed.[139]

Two other comments focused on quantitative suitability, which requires a broker-dealer that has actual or de facto control over an account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile. These commenters believed that FINRA should eliminate the requirement under quantitative suitability that a broker-dealer have "control" over an account before the obligation applies.[140] Yet another commenter stated that FINRA should eliminate supplementary material from all rules and limit rulemaking to rule text.[141]

• FINRA's Response

FINRA believes that supplementary material is an important means of providing greater specificity to a rule's overarching requirements. FINRA notes that supplementary material will be filed with the SEC and is enforceable to the same extent as the main rule text.

With regard to the codification of the main suitability obligations, FINRA disagrees with the contention that the discussion creates new standards that provide less protection to customers. The discussion at issue codifies existing interpretations of suitability obligations, often directly from IMs following NASD Rule 2310[142] and case law.[143] The commenter argued that presuming that firms and associated persons are familiar with the products they recommend would provide greater protection to customers. FINRA believes the opposite is true, and FINRA's examination and enforcement experience belies the notion that firms and associated persons are always familiar with every recommended product or strategy. The existing duty to perform adequate due diligence to understand the products and strategies that firms and associated persons recommend is of critical importance to the protection of investors.[144] This is especially true in light of the increasing complexity of certain products and strategies.

Elimination of Interpretive Material Following NASD Rule 2310

In connection with the new suitability rule, FINRA proposes eliminating many and modifying some of the IMs that follow NASD Rule 2310. This aspect of the proposal also generated several comments.

• Comments

A few commenters were concerned that the proposal did not include some of the current IMs, especially IM–2310–2.[145] These commenters believe that it is important to maintain the statement in IM–2310–2 that brokers can be disciplined for excessive trading, unauthorized trading, and fraud.[146] One commenter noted in particular that this IM was the only place in the entire NASD conduct rules explicitly prohibiting unauthorized trading.[147]

• FINRA's Response

FINRA continues to believe that most of the current IMs following NASD Rule 2310 should be eliminated or modified because they are no longer necessary. As discussed in detail in Item II.A. of this filing, some are duplicative of other rules and others would be rendered unnecessary by changes proposed in the new suitability rule. For example, as noted in Item II.A., it is well-settled that unauthorized trading violates just and equitable principles of trade under FINRA Rule 2010. Consequently, the elimination of the discussion of unauthorized trading in the IMs following the suitability rule in no way alters the longstanding view that unauthorized trading clearly violates FINRA's rules.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[136] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44; Taurus Letter, *supra* note 44; T.RowePrice Letter, *supra* note 44.

[137] *See* NASAA Letter, *supra* note 34.

[138] *See* NASAA Letter, *supra* note 34.

[139] *See* NASAA Letter, *supra* note 34.

[140] *See* Cornell Letter, *supra* note 44; Estell Letter, *supra* note 69.

[141] *See* FOLIOfn Letter, *supra* note 63.

[142] *See, e.g.,* IM–2310–2(b)(2) (discussing quantitative suitability, also called excessive trading); IM–2310–3 (discussing reasonable-basis and customer-specific suitability).

[143] *See, e.g., James B. Chase,* Securities Exchange Act Release No. 47476, 2003 SEC LEXIS 566, at *17 (Mar. 10, 2003) (involving customer-specific suitability); *Harry Gliksman,* 54 S.E.C. 471, 474–75 (1999) (discussing excessive trading); *Rafael Pinchas,* 54 S.E.C. 331 (1999) (discussing excessive trading and customer-specific suitability); *F.J. Kaufman & Co.,* 50 S.E.C. 164, 168–69 (1989) (discussing both reasonable-basis and customer-specific suitability); *Patrick G. Keel,* 51 S.E.C. 282, 284–87 (1993) (upholding violation of customer-specific suitability); *Dep't of Enforcement* v. *Medeck,* No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *31 (NAC July 30, 2009) (discussing excessive trading); *Dep't of Enforcement* v. *Siegel,* No. C05020055, 2007 NASD Discip. LEXIS 20, at *36–40 (NAC May 11, 2007) (discussing reasonable-basis suitability and due-diligence requirement thereunder), *aff'd,* Securities Exchange Act Release No. 58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), *aff'd in relevant part,* 592 F.3d 147 (D.C. Cir. Jan. 12, 2010), *cert. denied,* 2010 U.S. LEXIS 4340 (May 24, 2010); *see also Regulatory Notice* 10–22, 2010 FINRA LEXIS 43, at *10–20 (April 2010) (discussing due diligence required for reasonable-basis suitability in context of recommended private offerings); *Notice to Members* 03–71, 2003 NASD LEXIS 81, *5–6 (Nov. 11, 2003) (discussing due diligence requirement for reasonable-basis suitability in context of recommendations of non-conventional investments).

[144] *See F.J. Kaufman & Co.,* 50 S.E.C. at 168–69 (discussing both reasonable-basis and customer-specific suitability); *Siegel,* 2007 NASD Discip. LEXIS 20, at *36–40 (discussing reasonable-basis suitability and due-diligence requirement thereunder); *see also Regulatory Notice* 10–22, 2010 FINRA LEXIS 43, at *10–20 (April 2010) (discussing due diligence required for reasonable-basis suitability in context of recommended private offerings); *Notice to Members* 03–71, 2003 NASD LEXIS 81, *5–6 (Nov. 11, 2003) (discussing due diligence requirement for reasonable-basis suitability in context of recommendations of non-conventional investments).

[145] *See* Cornell Letter, *supra* note 44; Corporate Law Center & Investor Rights Clinic, *supra* note 44; NASAA Letter, *supra* note 34.

[146] *See* Cornell Letter, *supra* note 44; Corporate Law Center & Investor Rights Clinic, *supra* note 44; NASAA Letter, *supra* note 34.

[147] *See* Corporate Law Center & Investor Rights Clinic, *supra* note 44.

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–039 and should be submitted on or before September 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[148]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20537 Filed 8–18–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62707; File No. SR–NYSEAmex–2010–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC Amending Rule 980–Exercise of Options Contracts

August 12, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 3, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 980–Exercise of Options Contracts. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 980 in order to extend the cut-off time to submit Contrary Exercise Advices ("CEA")[4] to the Exchange.

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their "contrary intention."

In addition to and separately from the OCC requirement, under NYSE Amex Rule 980 option holders must file a CEA with the Exchange notifying it of the contrary intention. Rule 980 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. ATP Holders[5] satisfy this evidentiary requirement by submitting a CEA form directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to

[148] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Contrary Exercise Advices are also known as Expiring Exercise Declarations ("EED").

[5] The term ATP refers to an Amex Trading Permit issued by the Exchange for effecting securities transactions on the Exchange. ATP Holders have the status of "member" of the Exchange as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

make a contrary exercise was made timely and in accordance with Rule 980.

Under Rule 980, option holders have until 5:30 p.m. on the last business day before their expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. ATP Holders may not accept CEA instructions from their customer or non customer accounts after 5:30 p.m. However, the current rule gives ATP Holders additional time to submit the CEA instructions if they use an electronic submission process.[6] Specifically, an ATP Holder may currently submit CEA instructions until 6:30 p.m. for electronic submission.

This current process allowing ATP Holders an additional one hour after the decision making cut off time of 5:30 p.m. to submit a CEA to the various options exchanges was approved by the Commission in 2003.[7] In 2003, the Ex-by-Ex thresholds were $0.75 for customers and $0.25 for broker-dealer accounts. In 2009, the Ex-by-Ex threshold is $0.01 for all accounts. This decrease in the Ex-by-Ex threshold, coupled with the dramatic increase in option trading volume from 2003 to 2009, has led to a larger number of CEA instructions and has increased the burden on firms to process and submit instructions timely.

The Exchange proposes to extend the current 6:30 p.m. deadline for submitting CEA instructions to the Exchange by one additional hour, to 7:30 p.m. The Exchange believes that this proposed rule change is necessary to address concerns that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange. The Exchange also proposes to modify the language in subsection (g) of the current rule, which allows ATP Holders up to 2 hours and 30 minutes to submit a CEA to the Exchange in the event of a modified close of trading on the day of expiration, by removing the two hour and thirty minute restriction and allowing for submission of a CEA to the Exchange in the event of a modified close of trading of up to the proposed 7:30 p.m. deadline. This will make consistent the submission deadline for both regular and modified close expiration days. Moreover, this will provide uniformity with submission deadlines for both regular and modified close expiration days which will remove any possibility for error when determining what the submission deadline is on any modified close expiration day.

In addition, the Exchange proposes to revise Commentary .04(i) to reflect that members and member firms, who electronically submit Contrary Exercise Advice decisions on behalf of non-customer option holders, will now have until 7:30 p.m. ET to submit such decisions to the Exchange.

This proposal does not change the substantive requirement that option holders make a final decision by 5:30 p.m. The options exchanges currently enforce the 5:30 p.m. requirement while giving members additional time to process and submit the CEA instructions. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. The initiative to address ATP Holder concerns is industry-wide. The International Securities Exchange recently adopted a rule change which extended by a one hour the submission time for CEAs.[8] The Exchange anticipates that other options exchanges will also propose similar rule changes. This additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues. If the operative date of this proposed rule change is more than five business days prior to the date of the next options expiration Friday, i.e. the third Friday of the month. ("Expiration Friday"),[9] the Exchange will implement the rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change is 5 business days, or less, prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. NYSE Amex will notify OTP Holders of the implementation date of the rule change via a Regulatory Bulletin.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposed rule change will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing ATP Holders an additional hour within which to complete the necessary processing of CEAs, will thereby decrease the burden of processing an increasing number of contrary exercise advices and enable ATP Holders to more easily manage and process these instructions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

[6] If an ATP Holder does not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 p.m. deadline. This deadline for manual submission is required in order to prevent firms from improperly extending the 5:30 p.m. deadline to exercise or not exercise an option. This requirement is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

[7] *See* Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR–Amex–2001–92); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR–ISE–2003–20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR–PCX–2003–47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR– Phlx–2003–65).

[8] *See* Securities and Exchange Act Release No. 61710 (March 15, 2010), 75 FR 13636 (March 22, 2010) Approval order for SR–ISE–2010–02.

[9] For example, Expiration Friday for August 2010 options will be August 20, 2010, Expiration Friday for September 2010 options will be September 17, 2010.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2010–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2010–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAMEX–2010–79 and should be submitted on or before September 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62708; File No. SR–BX–2010–055]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating To Extend the Cut-Off Time To Submit Contrary Exercise Advices and Make Some Clerical and Conforming Changes

August 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter VII (Exercises and Deliveries) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to extend the cut-off time to submit contrary exercise advices and make some clerical changes and Chapter X (Minor Rule Violations) to make some conforming changes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXBX/Filings/,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter VII, Section 1 of the BOX Trading Rules to extend the cut-off time to submit contrary exercise advices ("Contrary Exercise Advice", or, "CEA") [3] to the Exchange. The Exchange also proposes to make certain non-substantive changes to reorganize the text of the Rule to more clearly present the existing requirements and to eliminate duplicative language.[4] The Exchange also proposes to make some clerical changes. In addition, the Exchange proposes to make some conforming changes to Chapter X.

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Contrary Exercise Advices are also referred to as Expiring Exercise Declarations ("EED") in the OCC rules.

[4] The Exchange proposes to reorganize the current rule text so that the requirement that exercise decisions must be made by 5:30 p.m. Eastern Time is specified in paragraph (c), while the requirements pertaining to submitting CEA instructions are contained in new paragraph (d). The language in new paragraph (d) is comprised of language moved from paragraph (b)(ii) and paragraph (c) of the current rule. The Exchange also proposes to eliminate Supplementary Material .03 to Chapter VII because it is duplicative of the language contained in paragraph (c) of the current rule and paragraph (d)(iii) in the proposal.

that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their "contrary intention."

In addition to and separately from the OCC requirement, under Chapter VII option holders must file a CEA with the Exchange notifying it of the contrary intention. Chapter VII is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. Options Participants satisfy this evidentiary requirement by submitting a CEA form directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Chapter VII.

Currently under Chapter VII, option holders have until 5:30 [5] p.m. on the day prior to expiration, or in the case of quarterly options, on the expiration date, to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. An Options Participants may not accept CEA instructions from its customer or non customer accounts after 5:30 p.m. However, the current rule gives Options Participants an additional one hour, up to 6:30 p.m., to submit these CEA instructions to the Exchange where such Options Participant uses an electronic submission process.[6]

This current process allowing Options Participants an additional one hour after the decision making cut off time of 5:30 p.m. to submit a CEA to the various options exchanges was approved by the Commission in 2003.[7] In 2003, the Ex-by-Ex thresholds were $0.75 for customers and $0.25 for broker-dealer accounts. In 2009, the Ex-by-Ex threshold is $0.01 for all accounts. This decrease in the Ex-by-Ex threshold, coupled with the dramatic increase in option trading volume from 2003 to 2009, has led to a larger number of CEA instructions and has increased the burden on firms to process and submit instructions timely.

The Exchange proposes to extend the current 6:30 p.m. deadline for submitting CEA instructions to the Exchange by one additional hour, up to 7:30 p.m. The Exchange believes that this proposed rule change is necessary to address concerns expressed by Options Participants that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange. The Exchange also proposes to modify the language in paragraph (g) of the current rule (new paragraph (h)), which allows an Options Participants up to 2 hours and 30 minutes to submit a CEA to the Exchange in the event of a modified close of trading on the day of expiration, by removing the two hour and thirty minute restriction and allowing a Options Participants to submit a CEA to the Exchange in the event of a modified close of trading of up to the proposed 7:30 p.m. deadline. This will make consistent the submission deadline for both regular and modified close expiration days. Moreover, this will provide uniformity with submission deadlines for both regular and modified close expiration days which will remove any possibility for error when determining what the submission deadline is on any modified close expiration day.

It is important to note that this proposed submission deadline does not change the substantive requirement that option holders make a final decision by 5:30 p.m. The Exchange will continue to enforce the 5:30 p.m. decision making requirement, while also allowing additional time to process and submit the CEA instructions. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. The initiative to address Options Participants concerns is industry-wide, and the Exchange anticipates that other options exchanges will also propose a one hour extension for which they will accept a CEA. This additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.[8]

The Exchange proposes to make some clerical changes. First, there are certain references in Chapter VII, Section 1 which currently read "BOX" or "BOXR", the Exchange proposes to change those certain references "the Exchange". In addition, the Exchange proposes to revise certain cross references, as the respective lettering has been modified by this proposal.

Finally, the Exchange proposes to amend Chapter X (Minor Rule Violations), Section 2(f). Specifically, the Exchange proposes to delete the word "Member" to insert the word "Participant" to adequately reflect the term used for firms or organizations registered with the Exchange for purposes of trading options on BOX. The Exchange also proposes to reletter the subsections referenced in Section 2(f) to correspond to applicable amendments to Chapter VII, Section 1 detailed above.[9]

If the operative date of this proposed rule change is more than 5 business days prior to the date of the next expiration Friday i.e. the third Friday of the month ("Expiration Friday"),[10] the Exchange will implement the rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change is 5 business days or less prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. The Exchange will notify Participants of the

[5] All referenced times are Eastern Time.

[6] If Participants do not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 deadline. This deadline for manual submission is required in order to prevent firms from improperly extending the 5:30 deadline to exercise or not exercise an option. This requirement is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

[7] *See e.g.* Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR–Amex-2001–92); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR–ISE–2003–20). This process has been in place at the Exchange since 2004. *See* Securities Exchange Act Release No. 34–49191 (February 4, 2004) 69 FR 7055 (February 12, 2004) (SR–BSE–2004–04).

[8] The proposed changes are based on a recently approved rule of the International Securities Exchange, LLC ("ISE"). *See* Securities Exchange Act Release No. 34–61458 (February 1, 2010), 75 FR 6237 (February 8, 2010) (SR–ISE–2010–02).

[9] Under this proposed rule change, the Minor Rule Violations will now cover Chapter VII, Sections 1(c), (d), (e), (g), and (h). These sections correspond to the former sections referenced by Chapter X, Section 2(f) of the Minor Rule Violations.

[10] For Example, Expiration Friday for August 2010 options will be August 20, 2010, Expiration Friday for September options will be September 17, 2010.

implementation date of the rule change via a Regulatory Circular.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposed rule change will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing Participants an additional hour within which to complete the necessary processing of CEAs, will thereby decrease Participants' burden of processing an increasing number of the contrary exercise advises and enable them to more easily manage and process these instructions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–055 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2010–055 and should be submitted on or before September 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20552 Filed 8–18–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7124]

Javits Report 2011

SUMMARY: In accordance with § 25 of the Arms Export Control Act (AECA), the State Department is required to provide to Congress an Arms Sale Proposal (the Javits Report) covering all sales and licensed commercial exports of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval. The Directorate of Defense Trade Controls (DDTC) is soliciting input regarding licensed commercial exports (*i.e.,* direct commercial sales) for the report.

DATES: All Javits Report 2011 submissions regarding direct commercial sales (DCS) must be received by September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Members of the public who need additional information regarding the DCS portion of the Javits Report should contact Patricia Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; or e-mail *SlyghPC@State.gov.*

SUPPLEMENTARY INFORMATION: The Javits Report 2011 is an Arms Sales Proposal, to Congress, which covers all sales and licensed commercial exports under the

Arms Export Control Act of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval during calendar year 2011, together with an indication of which licensed commercial exports are deemed most likely to result in the issuance of an export license during 2011.

Javits Report entries for proposed Direct Commercial Sales should be submitted on the DS–4048 form to *javitsreport@state.gov,* no later than September 10, 2010. The DS–4048 form and instructions are located on the DDTC's Web site at *http://www.pmddtc.state.gov/reports/javits_report.html.* Submissions should be limited to those activities for which a prior marketing license or other approval from DDTC has been authorized and ongoing contract negotiations will result in either a procurement date in 2011 or the likely award of the contract to the reporting company during 2011. To complete the DS–4048 form, the following information is required: Country to which sale is proposed; Category of proposed sale (aircraft, missile, ships, satellite, etc.); Type of sale (direct commercial sale or foreign military sale); Value of proposed sale and quantity of items anticipated. Include a concise description of the article to be sold, including status of the proposed sale or export any details of what is expected to be included in the contract (maintenance, upgrade, etc.).

Dated: August 9, 2010.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2010–20627 Filed 8–18–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 7125]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 3 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

August 10, 2010 (Transmittal No. DDTC 109–024.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services for the Hughes Air Defense Radar and Air Defense System (HADAR) in Taiwan for the intermediate level operation, maintenance, installation, test, training, and repair of the HADAR system. Taiwan Air Force is the end user.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

August 10, 2010 (Transmittal No. DDTC 10–027.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to both a combined technical assistance agreement and manufacturing licensing agreement for the export of defense articles, to include technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of hardware and export of defense articles, to include technical data, and defense services, for the GD–53 Multimode Radar on Taiwan's Indigenous Defensive Fighter (IDF) Aircraft. The hardware manufactured abroad in conjunction with the manufacturing licensing agreement associated with this notification consists of components of the GD–53 Multimode Radar. The end user is the Taiwan Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

August 5, 2010 (Transmittal No. DDTC 10–068.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the sale and support of the VINASAT–2 Commercial Communications Satellite Program to Vietnam.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Matthew Rooney,
Principal Deputy Assistant Secretary, Legislative Affairs.

Dated: August 13, 2010.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2010–20626 Filed 8–18–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 7, 2010

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49

U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2010–0198.

Date Filed: August 3, 2010.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 642—Resolutions: 024a—Establishing Passenger Fares and Related Charges; 024e—Rules for Payment of Local Currency Fares (Memo 1578). Intended effective date: 1 December 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–20577 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0106]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of Transportation (U.S. DOT) FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection: SAFETEA–LU Section 6009 Phase 2 Implementation Study Survey. The **Federal Register** notice with a 60-day public comment period soliciting comments on this information collection was published on June 2, 2010. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 20, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0106.

FOR FURTHER INFORMATION CONTACT: Carol Braegelmann, (202) 366–1701, FHWA Office of Project Development and Environmental Review, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: SAFETEA–LU Section 6009 Phase 2 Implementation Study Survey.

Background: Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) amended existing Section 4(f) legislation to simplify the process and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). SAFETEA–LU also required the U.S. DOT to promulgate regulations to clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives that avoid uses of Section 4(f) properties.

As mandated in the legislation, U.S. DOT conducted a study on the implementation of new Section 4(f) provisions and its amendments (herein referred to as Phase I). During development of the Phase I study, U.S. DOT determined that sufficient information would not be available during Phase I to adequately evaluate the new prudent and feasible standards. Based on this fact, along with recommendations provided by the Transportation Research Board (TRB) on strengthening the Phase I findings, U.S. DOT is requesting approval to sponsor a one-time survey on implementation of Section 6009 and its amendments. The U.S. DOT and John A. Volpe National Transportation Systems Center (Volpe Center) have designed the survey and will submit the survey plan and its associated information collection burden to OMB for approval. The information collection supports the U.S. DOT's Environmental Stewardship Strategic Goal. U.S. DOT will be better able to evaluate how SAFETEA–LU Section 6009 may improve environmental decision-making and expedite environmental reviews of transportation infrastructure projects.

The survey will solicit information on: (1) The post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects where a Section 4(f) *de minimis* impact finding or Section 4(f) finding under the revised Section 4(f) regulations was made; and (2) the processes developed to address the Section 4(f) *de minimis* impacts and revise the feasible and prudent standards and the efficiencies that may result. U.S. DOT will use the results to evaluate the effectiveness and any resulting efficiencies of SAFETEA–LU Section 6009 and its amendments.

Respondents: The proposed survey will be a web-based survey located on the Survey Monkey Web site (*http://www.surveymonkey.com*). Staff members at state and local transportation agencies and transportation authorities, State Historic Preservation Offices (SHPO), Federal, state and local agencies with jurisdiction over park, recreation areas, or wildlife and waterfowl refuges, and citizen/advocacy groups will be asked to complete the survey. U.S. DOT estimates that approximately 120 participants (30 state DOTs, 15 transit and other transportation agencies, 25 SHPOs, 25 park and recreation officials, and 25 citizen groups) will complete the survey.

Frequency: This is a one-time collection.

Estimated Average Burden per Response: Approximately 20 minutes per participant for the one-time survey.

Estimated Total Annual Burden Hours: Approximately 40 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: August 11, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–20538 Filed 8–18–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0107]

Agency Information Collection Activities: Notice of Request for Approval of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for approval of a new information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's

(OMB) approval of a new information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 18, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010–0107 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Heather Contrino, 202–366–5060, or Erica Interrante, 202–366–5048, Office of Transportation Policy Studies, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: The Next Generation of Travel Focus Groups.

Background: The awareness and use of new technologies, communication and travel options, as well as social norms will influence transportation needs of the future. As Federal Highway Administration (FHWA) considers the future outlook of an improved National Highway System, the transportation behaviors, perspectives and needs of the younger traveler cohort is a topic of study the agency is pursuing to better evaluate future planning and policy options.

The Next Generation of Travel study, being performed through the agency's Office of Policy Transportation Studies division, will be studying existing and future travel patterns, as well as how new vehicle and transportation-related technologies affect generations and the future of personal travel. Certain generational implications on transportation that FHWA will be exploring include the following: mode choice, trip type and rates, travel time and distances, vehicle ownership and characteristics, vehicle occupancy, vehicle availability, travel costs, personal income, worker status, home and work location, life cycle, internet usage and telecommuting.

FHWA will be conducting a series of focus groups with individuals in the U.S. to gain additional understanding into the travel activities, choices and views of transportation by the traveling public. The focus groups will provide important information about the next several generations of travelers, playing a critical role in informing on the outcomes of the data analysis, the accuracy of the traveler profiles, and other new or emerging norms and perspectives not identified in previous work. The information collected will also be used to identify new and emerging travel behavior, perspectives and social norms not covered through the statistical analysis. This is the first time that FHWA will be conducting a study on this topic.

Respondents: Approximately 20 focus groups made up of 8–10 participants each from U.S. households will be held in different regions across the country. The focus groups will include participants from all the age cohorts; however, at least half of the focus groups will be made up of participants 16–29 years of age. The estimated total number of respondents is 200.

Frequency: The series of focus groups will be conducted once. No individual will participate in the focus groups more than once. The focus groups will be conducted during calendar year 2011.

Estimated Average Burden per Response: The estimated average burden per respondent is 60 minutes.

Estimated Total Annual Burden Hours: The estimated total annual burden for the focus group series is 200 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 11, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–20539 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 26, 2010 (75 FR 29487).

Comments: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Type of Request: Extension of a currently approved collection.

Form Number: This collection of information uses no standard forms.

DATES: Comments must be submitted on or before September 20, 2010.

FOR FURTHER INFORMATION CONTACT: John Piazza, National Highway Traffic Safety Administration, Office of the Chief Counsel (NCC–111), (202) 366–9511, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Criminal Penalty Safe Harbor Provision.

OMB Control Number: 2127–0609.

Frequency: We believe that there will be very few criminal prosecutions under 49 U.S.C. 30170, given the lack of prosecutions under the statute to date. Accordingly, it is not likely to be a substantial motivating force for a submission of a corrected report in

response to an agency request for information. See Summary of the Collection of Information below. Based on our experience to date, we estimate that no more than one (1) person per year would be subject to this collection of information, and we do not anticipate receiving more than one report a year from any particular person.

Affected Public: This collection of information would apply to any person who seeks a "safe harbor" from potential criminal liability under 49 U.S.C. 30170. Thus, the collection of information could apply to the manufacturers, any officers or employees thereof, and other persons who respond or have a duty to respond to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder.

Abstract: NHTSA has published a final rule related to "reasonable time" and sufficient manner of "correction," as they apply to the safe harbor from criminal penalties, as required by Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414), which was enacted on November 1, 2000. 65 FR 38380 (July 24, 2001).

Estimated Annual Burden: Using the above estimate of one (1) affected person a year, with an estimated two (2) hours of preparation to collect and provide the information, at an assumed rate of $26.70 an hour, the annual, estimated cost of collecting and preparing the information necessary for one complete "safe harbor" correction is $53.40. Adding in a postage cost of $0.44 (one report at a cost of 44 cents to mail each one), we estimate that it will cost $53.84 a year for persons to prepare and submit the information necessary to satisfy the safe harbor provision of 49 U.S.C. 30170.

Since nothing in this rule would require those persons who submit reports pursuant to this rule to keep copies of any records or reports submitted to us, the cost imposed to keep records would be zero hours and zero costs.

Number of Respondents: We estimate that there will be no more than one per year.

Summary of the Collection of Information: Any person seeking protection from criminal liability under 49 U.S.C. 30170 related to an improper report or failure to report pursuant to 49 U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, is and will be required to report the following information to NHTSA: (1) Each previous improper item of information or document and each failure to report that was required under 49 U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, (2) the specific predicate under which each improper or omitted report should have been provided, and (3) the complete and correct reports, including all information that was improperly submitted or that should have been submitted and all relevant documents that were not previously submitted to NHTSA or, if the person cannot provide this, then a full detailed description of that information or of the content of those documents and the reason why the individual cannot provide them to NHTSA.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: August 12, 2010.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2010–20574 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0104]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 18, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010–0104 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. *e.t.,* Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Erin Robertson, (202) 366–4814, or Dale Gray, (202) 366–0978, Office of the Chief Financial Officer, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Request Forms for Fund Transfers to Other Agencies and Among Title 23 Programs.

OMB Control Number: 2125–0620.

Background: Sections 1108, 1119(b), 1935, and 1936 of Public Law 109–59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) expanded the transferability of funds to other agencies and among programs. This notice establishes requirements for initiating the transferring of apportioned and allocated funds between entities and between projects and programs to carry out these provisions of law. The types of transfers affected by this notice are:

a. Transfer of funds from a State to the FHWA pursuant to U.S.C. Title 23, § 104(k)(3);

b. Transfer of funds from a State to a Federal Agency other than FHWA;

c. Transfer of funds from a State to another State;

d. Transfer of funds from Federal Transit Administration to FHWA;

e. Transfer of funds between programs; and,

f. Transfer of funds between projects.

The party initiating the fund transfer must fill out a FHWA transfer request form. Information required to fill out a transfer form will include the requester's contact information; a description of the program/project the transfer will come from and go to, the fiscal year, the program code, a demo ID or an urban area when applicable, and the amount to be transferred. The form must be approved by the applicable State Department of Transportation and concurred on by the correlating FHWA Division Office.

Respondents: 50 State Transportation Departments, the District of Columbia, and Puerto Rico.

Frequency: As Needed.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden Hours: It is estimated that a total of 600 responses will be received annually, which would equal a total annual burden of 300 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: August 9, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–20540 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Draft Tier II Environmental Impact Statement: Southeast High Speed Rail Corridor—Richmond, VA (Main Street Station) to Raleigh, NC (Boylan Wye)

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of extension of comment period for the Tier II Draft Environmental Impact Statement for the Southeast High Speed Rail, Richmond, VA to Raleigh, NC Project (Project).

SUMMARY: On May 4, 2010, the Federal Railroad Administration (FRA) signed the Draft Tier II Environmental Impact Statement for the Southeast High Speed Rail, Richmond, VA to Raleigh, NC (Project). FRA is the lead Federal agency on the Project, and the North Carolina Department of Transportation Rail Division (NCDOT) and the Virginia Department of Rail and Public Transportation (DRPT) are co-lead State agencies. By **Federal Register** Notice dated June 7, 2010, FRA announced the public hearing schedule for the Project and set the closing date for the comment period as August 30, 2010. Because of the high amount of interest in the Project, FRA, NCDOT and DRPT have decided to extend the comment period to Friday, September 10, 2010.

DATES: The comment period on the Project is extended until September 10, 2010.

ADDRESSES: Comments may be submitted via the project Web site at *http://www.sehsr.org* or mailed to SEHSR Comments, NCDOT Rail Division, 1553 Mail Service Center, Raleigh, NC 27699–1553, SEHSR Comments, DRPT, 600 East Main Street, Suite 2102, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: For further information regarding the environmental review, please contact one of the following three individuals: Mr. Patrick Simmons, NCDOT Rail Division, 1553 Mail Service Center, Raleigh, NC 27699–1553 (telephone 919.733.7245), or by e-mail at *pbsimmons@ncdot.gov*, with "SEHSR Richmond to Raleigh," in the subject heading; or Ms. Christine Fix, Department of Rail & Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219 (telephone 804 786–1052) or by e-mail at *christine.fix@drpt.virginia.gov*, with "SEHSR Richmond to Raleigh" in the subject heading; or Mr. John Winkle, Transportation Industry Analyst, Office of Passenger Programs, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room W38–311, Washington, DC 20590 (telephone 202 493–6067), or by e-mail at *John.Winkle@DOT.Gov* with "SEHSR Richmond to Raleigh" in the subject heading.

SUPPLEMENTARY INFORMATION: The Tier II DEIS evaluates alternatives and the environmental impacts for proposed high speed passenger rail service with a maximum authorized speed of 110 miles per hour within the preferred corridor described in the Tier I Record of Decision for the SEHSR Corridor from Washington, DC to Charlotte, NC. This Tier II DEIS is focused on the approximately 162 mile portion of the corridor between Main Street Station in Richmond, VA and the Boylan Wye in Raleigh, NC. FRA's June 7, 2010 **Federal Register** notice describes the project in greater detail. In light of the public interest in the project and the environmental process, FRA, NCDOT, and DRPT have extended the public and agency comment period until September 10, 2010.

Availability of the DEIS

Copies of the Draft EIS and appendices are available for review at the following locations:

- Richmond Main Public Library, 101 East Franklin Street, Richmond, VA
- Richmond Regional Planning District Commission, 9211 Forest Hill Avenue, Suite 200, Richmond, VA
- Chesterfield County Central Public Library, 9501 Lori Road, Chester, VA
- Colonial Heights Public Library, 1000 Yacht Basin Drive, Colonial Heights, VA
- Petersburg Central Public Library, 137 S. Sycamore Street, Petersburg, VA
- Crater District Planning Commission, 1964 Wakefield Street, Petersburg, VA
- Dinwiddie County Planning Department, 14016 Boydton Plank Road, Dinwiddie, VA
- Southside Virginia Community College Library, Christiana Campus, 109 Campus Drive, Alberta, VA
- Southside Planning District Commission, 200 S. Mecklenburg Avenue, South Hill, VA
- Norlina Town Hall, 101 Main Street, Norlina, NC
- NCDOT District 3 Office, 321 Gillburg Road, Henderson, NC
- Franklinton Branch Public Library, 9 West Mason Street, Franklinton, NC
- NCDOT District 1 Office, 4009 District Drive, Raleigh, NC

The project Web site *http://www.sehsr.org* includes a complete list of locations and addresses. The document is also available at the

Virginia Department of Rail and Public Transportation Office at 600 East Main Street, Suite 2102, Richmond, VA; and the North Carolina Department of Transportation Rail Division at 1 South Wilmington Street, Raleigh, NC. In addition, electronic versions of the Draft Tier II EIS and appendices are available through FRA's Web site at: *http://www.fra.dot.gov* and also on the DRPT Web site at *http://www.drpt.virginia.gov* and the project Web site at *http://www.sehsr.org*.

Issued in Washington, DC, on August 12, 2010.

Mark E. Yachmetz,

Associate Administrator for Railroad Policy and Development.

[FR Doc. 2010–20534 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Space Transportation Operations Working Group (STOWG) of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Friday, September 17, 2010, starting at 11:00 a.m. Eastern Daylight Time. Individuals who plan to participate should contact Susan Lender, DFO, (the Contact Person listed below) by phone or e-mail for the teleconference call-in number.

The proposed agenda for this teleconference is to continue the group's review of the Concept of Operation for Global Space Vehicle Debris Threat Management report. This is one of the action items from the May 19, 2010 meeting held at the National Housing Center, 1201 15th Street, NW., Washington, DC 20005.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by September 10, 2010, so that the information can be made available to COMSTAC members for their review and consideration before the September 17, 2010, teleconference. Written statements should be supplied in the following formats: One hard copy with original signature or one electronic copy via e-mail.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast*.

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION, CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; E-mail *susan.lender@faa.gov*. Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/*.

Issued in Washington, DC, August 13, 2010.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2010–20519 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eleventh Meeting: RTCA Special Committee 209: In Joint Session With EUROCAE WG–49: ATCRBS/Mode S Transponder MOPS Maintenance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 209: In Joint Session with EUROCAE WG–49 ATCRBS/Mode S Transponder MOPS Maintenance.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 209: In Joint Session with EUROCAE WG–49 ATCRBS/Mode S Transponder MOPS Maintenance.

DATES: The meeting will be held September 8–10, 2010 from 9 a.m.–5 p.m. EDT

ADDRESSES: The meeting will be held at the RTCA Headquarters, 1828 L Street, NW., Washington, DC, Location: MacIntosh-NBAA/Hilton-ATA Rooms, Host Contact: Hal Moses, RTCA, 202–833–9339, *hmoses@rtca.org,* Secretary Contact: Gary Furr 1–609–485–4254, *gary.ctr.furr@faa.gov.*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 209: In Joint Session with EUROCAE WG–49 ATCRBS/Mode S Transponder MOPS Maintenance meeting. The agenda will include:

- Opening Session (Host and Co-Chairs Welcome, Introductions and Remarks)
- Review and Approval of the Agenda (SC209–WP11–01)
- Review and Approval of the Minutes of Meeting #10 (SC209–WP11–02)
- Review of the Status of Open Action Items
  - AI–10–11—Review of Documents for P5 Pulse Position Differences (WP11–03)
  - AI–10–03—Issues Related to Zeroing Registers 08_{16} & 20_{16} (WP11–04)
  - AI–10–02—Register 60_{16} Maximum Update Interval Changes (WP11–05)
  - AI–10–01—Errata for Register 60_{16} for GPS Data Input (WP11–06)
  - AI–10–09—Review of MOPS for Usage of the term "All-Call" (WP11–07)
- Discussion of Other Issues Related to Proposed Changes to DO–181D/ED–73C
  - WP11–xx—Review
- Review of the Actual Change Documents for DO–181D and ED–73C
  - WP11–xx—Proposed Draft of Change 1 to DO–181D
  - WP11–xx—Proposed Draft of Change 1 to ED–73C
- Date, Place and Time of any Future Meetings
- Other Business
  - WP11–xx
- Adjournment

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, August 13, 2010.

Kathy L. Hitt,

RTCA Advisory Committee.

[FR Doc. 2010–20541 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Maryland Transit Administration

Waiver Petition Docket Number FRA–2010–0128

The Maryland Transit Administration (MTA), on behalf of the Maryland Area Regional Commuter (MARC) train service, seeks a waiver of compliance from the Locomotive Safety Standards at 49 CFR 229.129(b)(2), which require that the sound level of locomotive horns manufactured before September 18, 2006, be tested before June 24, 2010. MARC owns 55 locomotives and 31 cab car locomotives, a total of 86 locomotive horns that required testing. Of the 86 locomotive horns, 43 (50 percent) have been tested. MTA states in their request that there are a number of reasons that the testing has not progressed as rapidly as needed to meet the requirement: Site requirements, weather conditions, and community noise complaints.

MTA requests that the requirement to complete testing of horns on locomotives built prior to September 18, 2006, be extended to December 31, 2010.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2010–0128) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA. FRA reserves the right to grant relief in response to this request prior to the expiration of the comment period. Any relief provided will be contingent upon FRA's consideration of any relevant comments submitted to the docket before the close of the comment period. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 13, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–20533 Filed 8–18–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–49: OTS Nos. 08156 and H4736]

Madison Square Federal Savings Bank, Baltimore, MD; Approval of Conversion Application

Notice is hereby given that on August 12, 2010, the Office of Thrift Supervision approved the application of Madison Square Federal Savings Bank, Baltimore, Maryland, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (*phone number:* (202) 906–5922 or *e-mail: public.info@ots.treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: August 13, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–20481 Filed 8–18–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Change in State of Incorporation; National Trust Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570, 2010 Revision, published July 1, 2010, at 75 FR 38192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that NATIONAL TRUST INSURANCE COMPANY (NAIC# 20141) has redomesticated from the state of Tennessee to the state of Indiana effective June 17, 2010. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2010 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: August 10, 2010.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2010–20405 Filed 8–18–10; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Thursday,
August 19, 2010

Part II

Social Security Administration

20 CFR Parts 404 and 416

Revised Medical Criteria for Evaluating Mental Disorders; Proposed Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2007–0101]

RIN 0960–AF69

Revised Medical Criteria for Evaluating Mental Disorders

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Social Security Act (Act). We also propose to remove certain sections of our regulations and incorporate some of their provisions into other sections of our regulations. The proposed revisions reflect our adjudicative experience, advances in medical knowledge, recommendations from a report we commissioned, and comments we received from experts and the public in response to an advance notice of proposed rulemaking (ANPRM) and at an outreach policy conference.

DATES: To ensure that your comments are considered, we must receive them no later than November 17, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2007–0101 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

• *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2007–0101. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

• *Fax:* Fax comments to (410) 966–2830.

• *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Why are we proposing to revise the listings for mental disorders?

We have not comprehensively revised section 12.00 of the listings—the mental disorders body system for adults (persons who are at least 18 years old)—since we published it in the **Federal Register** on August 28, 1985.[1] We last published final rules that comprehensively revised section 112.00—the mental disorders listings for children (persons under age 18)—on December 12, 1990.[2]

Although the 1985 and 1990 listings were significant advancements in our rules at the time we published them, they were based in part on prior editions of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM).[3] We have also gained considerable adjudicative experience in the decades since we published those adult and child listings.

We published some updates to the mental disorders listings in 2000. Those updates improved the rules, but did not comprehensively revise or update them.[4]

We are now proposing to update and revise the listings for mental disorders to reflect our adjudicative experience and the advances in medical knowledge, treatment, and methods of evaluating mental disorders that have occurred since we last revised them comprehensively. As we explain below, the proposed rules also reflect recommendations from a report we commissioned, comments we received in response to an ANPRM, and information from a policy conference we held about mental disorders in the disability programs.

How did we develop these proposed rules?

In addition to our adjudicative experience and review of advances in medical knowledge, treatment, and methods of evaluating mental disorders, we asked experts and the public to provide us with information that helped us develop the proposals.

1. In 2000, we commissioned a report from the National Research Council (NRC), *Mental Retardation: Determining Eligibility for Social Security Benefits* (NRC report), published in 2000.[5] The primary focus of the report was on persons who have mental retardation in what is called the "mild" range in the current edition of the DSM, the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (DSM–IV–TR);[6] that is, with intelligence quotient (IQ) scores from 50–55 to approximately 70. The NRC committee:

• Examined the scientific bases regarding intelligence and adaptive behavior, the relationship between them, and the assessment of both;

• Examined differential diagnosis; and

• Searched the related literature.

2. We published an ANPRM in the **Federal Register** on March 17, 2003.[7] We informed the public that we were planning to update and revise the rules

[1] 50 FR 35038 (1985).

[2] 55 FR 51208 (1990).

[3] The 1985 adult listings were based in part on the third edition of the DSM (the DSM–III), and the 1990 childhood listings were based in part on the revised third edition (the DSM–III–R).

[4] On July 18, 1991, we published an NPRM and proposed to update and revise many of the rules for adults that we published in 1985 and some of the childhood rules that we published in 1990; we also proposed in §§ 404.1520a and 416.920a new rules for evaluating mental disorders in children. 56 FR 33130. On August 21, 2000, we published final rules for only some of the provisions we proposed in the NPRM. 65 FR 50746, corrected at 65 FR 60584. We explained in the preamble to that notice that medical changes and changes in the law since the time we published the NPRM required us to review some of our proposed revisions and to defer action on those proposed revisions. We also published minor revisions to the childhood mental disorders listings on February 11, 1997, and September 11, 2000, because of changes in the law. 62 FR 6408 and 65 FR 54747.

[5] Citation in the References section at the end of this preamble.

[6] Complete citation in the References section of this preamble.

[7] 68 FR 12639 (2003).

we use to evaluate mental disorders and invited interested persons and organizations to send us comments and suggestions for updating and revising the mental disorders listings. We also asked for comments on the NRC report.[8] We received almost 500 letters and e-mails in response to the notice, many from persons who have mental disorders or who have family members with such disorders. We also received comments from medical experts, advocates, and our adjudicators.[9]

3. We hosted a policy conference called "Mental Disorders in the Disability Programs" in Washington, DC, on September 23 and 24, 2003. At this conference, we received comments and suggestions for updating and revising our rules from physicians who treat patients with mental disorders, other professionals and advocates who work with persons who have mental disorders, and adjudicators who make disability determinations and decisions for us in the State agencies and in our Office of Disability Adjudication and Review.

Although we are not summarizing or formally responding to most of the comments we received, many of the changes we propose reflect those comments.

How are the current mental disorders listings structured, and what do they require?

For most of the listed mental disorders, the current listings are in three, or sometimes four, parts.[10] The first part of every mental disorder listing is a brief introductory paragraph that provides a general diagnostic description of the disorder(s) covered by the listing. The second part of most of these listings contains "paragraph A" criteria, which are the specific symptoms, signs, and laboratory findings that substantiate the presence of particular mental disorders. An impairment cannot meet a mental disorder listing unless it satisfies the diagnostic description and the paragraph A criteria of that listing. The third part of most mental disorder listings contains "paragraph B" criteria, which for adults describe impairment-related functional limitations that are incompatible with the ability to work.[11] The paragraph B criteria provide descriptions of the four areas of functioning that we use to establish the severity of a person's mental disorder. A mental disorder is of listing-level severity if it satisfies two of the paragraph B criteria.[12]

Some listings[13] also include a fourth part, which we call "paragraph C" criteria. The paragraph C criteria are alternatives to paragraph B for establishing the severity of certain chronic mental disorders. In the paragraph C criteria, we recognize that psychosocial supports, treatment, or both may control the more obvious symptoms and signs of a chronic mental disorder, so that a person may not appear to be as limited as he or she actually is. The paragraph C criteria provide a way for finding listing-level disability in persons whose impairments do not meet the current paragraph B criteria, but who cannot tolerate the stress of work.

What major revisions are we proposing?

We propose to revise both the content and the structure of the adult and childhood mental disorders listings. The proposed mental disorders listings do not include an introductory diagnostic paragraph or a set of specific paragraph A diagnostic criteria. Instead, a person would need only show that he or she has a mental disorder that:

(1) Is covered by one of the ten listing categories, and

(2) Except for certain listings under 12.05, results in marked limitations of two or extreme limitation of one of four paragraph B "mental abilities" or satisfies the paragraph C criteria.

We are also proposing to:

- Broaden most of the current listing categories to include more mental disorders.
- Add listings.
- Provide new paragraph B criteria.
- Revise the paragraph C criteria and extend them to all of the mental disorders listing categories except proposed listings 12.05 and 112.05.
- Clarify our definitions of the terms "marked" and "extreme."

As we have already noted, some of the proposed revisions reflect comments and recommendations we received from persons who responded to the ANPRM and from others who attended the 2003 conference. Some of the proposed revisions based on comments and recommendations include:

Some commenters recommended that we include all mental disorders described in the most recent version of the DSM. We agreed with the commenters that the listings should include more mental disorders than they do now, but we did not agree that we should include all mental disorders. Some mental disorders are unlikely to result in functional limitations of listing-level severity or meet the duration requirement, and some are otherwise inappropriate for inclusion in our listings. Instead, we propose to broaden most of the current listing categories and to add some new listings.

The proposed new paragraph B criteria reflect comments from several mental health advocates who recommended that we provide criteria for evaluating a person's functioning in work-related terms. These advocates thought that we should: (1) Look at the impact of an impairment across domains of functioning critical for an adult to function in competitive employment, (2) create criteria that reflect a person's lack of skills in managing life and work, and (3) consider whether the person has the capacity to exercise independent judgment and truly care for himself or herself in a meaningful way without structure. We would also use the same criteria for children beginning at age 3, although in terms appropriate to childhood functioning.[14]

We also agreed with several commenters who recommended that we add a criterion for "extreme" limitation in paragraph B, so that a person's mental disorder can meet a listing with either "extreme" limitation in only one of the paragraph B criteria or "marked" limitation in two. We already have such criteria for children from birth to age 3 in the current listings, but not for older children or adults. We agreed with commenters who suggested that we use

[8] 68 FR at 12640.

[9] If you would like to read the comments, you can find them on our Internet site at: *https://s044a90.ssa.gov/apps10/erm/rules.nsf/Rules+Closed+To+Comment*. Click on the link for "0960–AF69: Revised Medical Criteria for Evaluating Mental Disorders."

[10] In the adult listings, the exceptions are listings 12.05 (mental retardation) and 12.09 (substance addiction disorders).

[11] At the end of this preamble, we provide information about two projects we have underway that may help us to better identify the requirements of work in the future. While the outcome of these projects may affect rules that we may propose in the future, we believe that these long-term projects do not affect our decision to proceed with these proposed rules now.

[12] We use different paragraph B criteria in the childhood listings to describe functional limitations in children of varying ages.

[13] Adult listings 12.02, 12.03, 12.04, and 12.06. There are no current childhood mental disorders listings with paragraph C criteria, but we can use the adult paragraph C criteria in appropriate child cases. See the seventh paragraph of current 112.00A.

[14] For children under age 3, we are proposing to add a new listing with paragraph B criteria that largely reflect the same mental abilities that we propose in the paragraph B criteria for children beginning at age 3 and for adults, but in terms appropriate for children in this age group. Thus, we would establish a fairly seamless continuum of evaluation from birth into adulthood.

the definitions of "marked" and "extreme" limitations that are in Supplemental Security Income (SSI) childhood disability regulations that we had recently issued.

We are also proposing to revise the paragraph C criteria based in part on comments that our current requirement for a medically documented 2-year history is unclear given the 1-year duration requirement in the definition of disability. We also agreed with commenters who recommended that we change the criterion in paragraph C for "decompensation" to "deterioration" because the former term is not appropriate in all cases. It refers to a state of extreme deterioration, often leading to hospitalization. We also agreed with a recommendation to add paragraph C criteria to the other mental disorders listings since the criteria could apply to other types of mental disorders. The only exception is under listings 12.05 and 112.05, where we do not believe it is necessary.

Finally, we agreed with a recommendation to expand and clarify our rules to recognize that non-physician professional sources, such as therapists and social workers, are often the mental health providers who can best provide a person's history and longitudinal evidence about functioning; that is, the person's functioning over time. The commenters noted that such a change would realistically reflect the way that mental health care is provided to most persons with chronic mental impairments.

What other significant revisions are we proposing?

We also propose to:

- Remove §§ 404.1520a and 416.920a, Evaluation of Mental Impairments. However, we would incorporate some of the provisions of these rules into other sections of our regulations.
- Expand, update, and reorganize the introductory text of the listings.
- Change the term "Mental Retardation" to "Intellectual Disability/ Mental Retardation (ID/MR)."
- Remove listings 12.09, Substance Addiction Disorders, and 112.09, Psychoactive Substance Dependence Disorders.
- Revise the heading of listing 112.11 from "Attention Deficit Hyperactivity Disorder" to "Other Disorders Usually First Diagnosed in Childhood or Adolescence." This proposed listing would still include attention-deficit/ hyperactivity disorder, but would also include tic disorders, now in current listing 112.07 (Somatoform, Eating, and Tic Disorders), and other mental disorders we do not currently list. We would also add listing 12.11 to cover these disorders in adults.
- Add a separate listing 112.13 for eating disorders in children, now covered by listing 112.07, and listing 12.13 to cover these disorders in adults.
- Add listing 112.14, Developmental Disorders of Infants and Toddlers (Birth to Attainment of Age 3), and remove current listing 112.12, Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to attainment of age 1).

Proposed 12.00—Introductory Text to the Adult Mental Disorders Listings

The following is a detailed description of the changes we are proposing to the introductory text.

Proposed 12.00A—What are the mental disorders listings, and what do they require?

Proposed 12.00A1

In this section, we name the ten proposed listing categories. These categories generally reflect major diagnostic categories in the DSM–IV–TR. We propose to change the names of six current listing categories, to remove a listing, and to add two listings, as shown in the table below.

Current listing category	Proposed listing category
12.02 Organic Mental Disorders	12.02 Dementia and Amnestic and Other Cognitive Disorders.
12.03 Schizophrenic, Paranoid and Other Psychotic Disorders	12.03 Schizophrenia and Other Psychotic Disorders.
12.04 Affective Disorders	12.04 Mood Disorders.
12.05 Mental Retardation	12.05 Intellectual Disability/Mental Retardation (ID/MR).
12.06 Anxiety Related Disorders	12.06 Anxiety Disorders.
12.07 Somatoform Disorders	12.07 Somatoform Disorders.
12.08 Personality Disorders	12.08 Personality Disorders.
12.09 Substance Addiction Disorders	[Removed—see proposed 12.00H].
12.10 Autistic Disorder and Other Pervasive Developmental Disorders	12.10 Autism Spectrum Disorders.
	12.11 Other Disorders Usually First Diagnosed in Childhood or Adolescence.
	12.13 Eating Disorders.

Proposed 12.00A2

In this section, we explain the structure of the mental disorders listings and how a person's impairment can meet a listing. The standard for meeting a listing based on "marked" limitations of two of the paragraph B mental abilities is the same as in the current mental disorders listings. The standard for meeting a listing based on "extreme" limitation of one mental ability would be new in the listings. Under current §§ 404.1520a(c)(4) and 416.920a(c)(4), however, a mental disorder that results in "extreme" limitation medically equals a listing. Under these rules, "extreme" limitation "represents a degree of limitation that is incompatible with the ability to do any gainful activity," which other rules explain is the standard of severity in the listings. Sections 404.1525(a) and 416.925(a). For this reason, our proposal to add a criterion for "extreme" limitation in the mental disorder listings would simplify our rules, allowing for a finding that an impairment meets, rather than equals, a listing.

In paragraph A2b(ii) of this section, we explain that, whenever we use the phrase "the paragraph B criteria" or "paragraph B" in the introductory text, we mean the paragraph B criteria of every mental disorder listing except listing 12.05. We are including this statement because listing 12.05 also has a paragraph B, but it is somewhat different from the "paragraph B" criteria common to all of the other listings. We include a similar statement regarding the paragraph C criteria in proposed 12.00A2c, where we briefly explain those criteria.

Proposed 12.00A3

In this section, we explain how a person's ID/MR meets proposed listing 12.05.

Proposed 12.00B—How do we describe the mental disorders listing categories?

In this new section, we describe the listing categories we use in the mental disorders listings. We then provide examples of symptoms and signs that

persons with disorders in each category may have. We also give examples of specific mental disorders in each category except listing 12.05, which covers only ID/MR. The information in the description of each category is not all-inclusive. We provide only basic information about some of the most commonly occurring mental disorders as examples of the kinds of disorders that we evaluate under each listing category.

The descriptions in 12.00B are similar to the current introductory diagnostic paragraphs and the paragraph A criteria, but we are not simply moving the introductory diagnostic paragraphs and the current paragraph A criteria from the listings into the introductory text. While the evidence must show that the person has a mental disorder in one of the listing categories, the mental disorder does not have to match one of the examples in proposed 12.00B. We will find that any mental disorder meets one of these listings when it can be included in one of the listings categories and satisfies the other criteria of the appropriate listing for that mental disorder.

The sections of proposed 12.00B do not require explanation, except for proposed 12.00B1 and 12.00B4.

Proposed 12.00B1—Dementia and Amnestic and Other Cognitive Disorders (12.02)

In the DSM–IV–TR, this category is called "Delirium, dementia, and amnestic and other cognitive disorders." We do not include the term "delirium" because delirium will generally not meet the 12-month duration requirement.

In proposed 12.00B1c, we include traumatic brain injury (TBI) as an example of a mental disorder we can evaluate under proposed listing 12.02. We continue to include a reference to 11.00F in the neurological section of our listings, as we do in current 12.00D10, to ensure that our adjudicators give full consideration to both the neurological and mental limitations resulting from TBI.

Proposed 12.00B4—Intellectual Disability/Mental Retardation (ID/MR) (12.05)

Proposed Name Change

As we noted earlier, we propose to change the name "Mental Retardation" to "Intellectual Disability/Mental Retardation (ID/MR)." The term "mental retardation" has taken on negative connotations over the years, is offensive to many persons, and results in misunderstandings about the nature of the disorder and the persons who have it. The term "intellectual disability" is now widely used internationally and is gradually replacing "mental retardation" in the United States.

For these reasons, and consistent with many other organizations, we are proposing to introduce the term "intellectual disability" in these listings.[15] Even though "mental retardation" is offensive to many persons, we are not proposing to remove it from our listings at this time; rather, we refer to "intellectual disability" and "mental retardation" together as the same disorder.[16] We have a number of reasons for doing this, including the following:

- Although the term "mental retardation" is gradually being replaced in the United States, it is still widely used and familiar to most persons.
- The DSM–IV–TR and some other leading clinical practice manuals still use the term.
- Many medical reports, school records, and other documents that are included in case files contain the term.
- A number of Federal and State benefit programs still use the term.

Also, since we recognize that not everyone in the United States is familiar with the term "intellectual disability," we want to be clear in these rules that we evaluate only what some persons still call "mental retardation" under listing 12.05 and not other forms of cognitive impairments, such as learning disorders (which we would evaluate under proposed listing 12.11).

Proposal To Require "Significant" Deficits in Adaptive Functioning To Demonstrate ID/MR

The introductory diagnostic paragraph in current listing 12.05 does not describe a level of severity for deficits of adaptive functioning. In proposed 12.00B4a, which describes the characteristics of ID/MR, we would require "significant" deficits of adaptive functioning. Major associations that provide diagnostic criteria for mental retardation generally refer to "significant" deficits or limitation.

The most recent edition of the American Association on Intellectual and Developmental Disabilities (AAIDD) manual states:

For the diagnosis of intellectual disability, significant limitations in adaptive behavior should be established through the use of standardized measures normed on the general population, including people with disabilities and people without disabilities. On these standardized measures, significant limitations in adaptive behavior are operationally defined as performance that is approximately 2 standard deviations below the mean of either (a) one of the following three types of adaptive behavior: conceptual, social, or practical, or (b) an overall score on a standardized measure of conceptual, social, and practical skills. * * *[17]

The American Psychological Association's *Manual of Diagnosis and Professional Practice in Mental Retardation* states:

Significant limitations in adaptive functioning are determined from the findings of assessment by using a comprehensive, individual measure of adaptive behavior. For adaptive behavior measures, the criterion of significance is a summary index score that is two or more standard deviations below the mean for the appropriate norming sample or that is within the range of adaptive behavior associated with the obtained IQ range sample in the instrument norms. * * * For adaptive behavior measures that provide factor or summary scores, the criterion of significance is multidimensional; that is, two or more of these scores lie two or more standard deviations below the mean for the appropriate norming sample or lie within the range of adaptive behavior associated with the intellectual level consistent with the obtained intelligence quotient, as indicated by the instrument norms.[18]

The DSM–IV–TR states:

The essential feature of mental retardation is significantly subaverage intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skills areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B).[19]

Therefore, the proposed requirement for "significant" deficits in adaptive functioning is generally consistent with the diagnostic criteria used in the clinical community.

Proposed Clarification of Our Rule on the Developmental Period for ID/MR

In the introductory paragraph of listing 12.05, we explain that a person's

[15] For more information about the use of new terms to replace "mental retardation," please refer to the 2002 report, "Usage of the Term 'Mental Retardation': Language, Image and Public Education," available on our Web site at *http://www.socialsecurity.gov/disability/MentalRetardationReport.pdf.* Complete citation in the References section of this preamble.

[16] We are also proposing to introduce the abbreviation "ID/MR," so we will not be using the phrase "mental retardation" as often as we do now.

[17] American Association on Intellectual and Developmental Disabilities, *Intellectual Disability: Definition, Classification, and Systems of Supports, 11th Edition,* Washington, DC (2010), page 43.

[18] Jacobson, John W., and Mulick, James A., eds., *Manual of Diagnosis and Professional Practice in Mental Retardation,* American Psychological Association, Washington, DC (1996), page 13.

[19] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, (DSM–IV–TR),* Washington, DC (2000), page 41.

mental retardation must be manifested during the "developmental period; [that is,] * * * before age 22." We propose to simplify this language by removing our reference to the "developmental period" and referring only to the period before age 22. The proposed change would not be substantive since the phrase "developmental period" means the period before the person attained age 22.

Also, in proposed 12.00B4c, we explain that ID/MR initially manifested before age 22 is often demonstrated by evidence from that period, but that, when we do not have such evidence, we will still find that a person has ID/MR if the current evidence and the history of the impairment are consistent with the diagnosis "and there is no evidence to indicate an onset after age 22." The quoted language is a clarification of our rules. In the current introductory paragraph of listing 12.05, we provide that the evidence must demonstrate "or support[ ]" onset of the impairment before age 22. We added this language in 2000 to better explain what we mean by evidence demonstrating that the disorder was initially manifested before age 22,[20] but we have received questions indicating that our intent is still not clear. Therefore, we are proposing to clarify the provision even further.

In proposed 12.00B4d, we would continue to include our rule that we accept the lowest IQ score on a test that provides more than one score (for example, a verbal, performance, and full scale IQ in a Wechsler series test). For a number of reasons, the NRC recommended that we change our rule to consider only the composite or "total" score (such as full scale IQ).[21] We decided not to propose the change at this time because we believe it is unnecessary and keeping our current rule will help us to adjudicate some cases more quickly than we would if we accepted the NRC recommendation. We are putting more emphasis in these rules on the need to confirm the validity of test results with other evidence, especially of a person's day-to-day functioning. We are also clarifying that a person must have "significant" deficits of adaptive functioning. The approach in these proposed rules is more in keeping with modern definitions of ID/MR, especially in the 2010 edition of the AAIDD manual, which emphasizes the "multidimensional" aspects of defining ID/MR.[22] We also know from our case reviews that only a relatively few claimants who qualify under current listing 12.05 do not have ID/MR, and we believe that the improvements we are making in these proposed rules will make our determinations and decisions even more accurate. Thus, we believe that, properly applied, the proposed rules will correctly identify persons who have the disorder.

In proposed 12.00B4e, we would clarify a number of provisions about listing 12.05C:

- We explain that the other physical or mental impairment must be a "severe" impairment, as defined in our regulations. We also explain that we do not count impairments that are not "severe" even if they prevent a person from doing past relevant work. Both of these provisions are in the fourth paragraph of current 12.00A.
- Current listing 12.05C provides that the other impairment must "impos[e] an *additional* and significant work-related limitation of functioning." (Emphasis added.) We propose to clarify this provision by specifying that the limitation(s) caused by the other physical or mental impairment must be separate from the limitations caused by the ID/MR.

Proposed 12.00C—What are the paragraph B criteria?

In this section, we describe the four paragraph B criteria that we propose to use to assess a person's impairment-related limitation in functioning in the mental disorder listings. The proposed paragraph B criteria are the mental abilities an adult uses to function in a work setting; that is, the abilities to:

- Understand, remember, and apply information (paragraph B1);
- Interact with others (paragraph B2);
- Concentrate, persist, and maintain pace (paragraph B3); and
- Manage oneself (paragraph B4).

We based the proposed criteria in part on critical work-related limitations and abilities that we consider at other steps in the five-step sequential evaluation process that we use to determine disability in adults. We also propose to use an approach for evaluating limitations similar to the approach we use in determining functional equivalence for children under SSI. We would consider how a mental disorder affects the person's underlying mental abilities and, thus, results in limitations in functioning. In addition, we have tailored the criteria to children using terms appropriate to childhood functioning. We believe this approach provides a seamless set of severity criteria in the proposed listings from childhood into adulthood.[23]

We are not proposing to change the types of evidence we would consider when we rate the severity of a person's limitations under the proposed paragraph B criteria. We know that most persons are not working when they apply for benefits; so, we must use information from their medical and other sources about how they function in their daily activities in order to draw conclusions about the functional limitations they would have in a work setting. This is essentially the same thing we do when we determine at step 2 of the sequential evaluation process that a person is limited in the ability to do basic work activities and when we assess residual functional capacity (RFC) for steps 4 and 5.

Proposed 12.00C1—Understand, Remember, and Apply Information (Paragraph B1)

In this section, we define the proposed paragraph B1 criterion and give examples of when a person uses this ability to perform work activities. We explain later in this preamble why we are proposing to remove the current paragraph B1 criterion, "activities of daily living."

Proposed 12.00C2—Interact With Others (Paragraph B2)

In this section, we define the proposed paragraph B2 criterion and give examples of when a person uses this ability to relate to and work with supervisors, co-workers, and the public in a work setting. This criterion is related to, but would replace, the current paragraph B2 criterion, "social functioning." We propose to remove some of the information in current 12.00C2 because it is not as useful in the context of the proposed B2 criterion as it is for the current criterion. For example, we propose to remove the current examples of limitation and strength in social functioning because we are proposing to focus on the mental abilities needed to work. In the proposed rule, we include examples of

[20] In explaining the change, we said:

We have always interpreted [the word "manifested"] to include the common clinical practice of inferring a diagnosis of mental retardation when the longitudinal history and evidence of current functioning demonstrate that the impairment existed before the end of the developmental period. Nevertheless, we also can see that the rule was ambiguous. Therefore, we expanded the phrase setting out the age limit to read: "*i.e.,* the evidence demonstrates or supports onset of the impairment before age 22."

65 FR at 50772, August 21, 2000.

[21] *See,* for example, the *NRC report, pages 31 and 108.*

[22] *See* especially Chapter 4 regarding the role of intelligence testing in diagnosing ID/MR.

[23] As we have already noted, and explain later in detail, we provide a somewhat different set of paragraph B criteria for children who have not attained age 3. However, those criteria are related to the proposed paragraph B criteria we would use for all other children and for adults.

what a person is expected to do when using the mental ability to interact with others in a work setting; for example, cooperating with co-workers or accepting criticism from a supervisor. An evaluation of the effects of a mental disorder on a person's mental ability to interact with others entails, among other things, a judgment of whether the person would be able to cooperate and accept criticism.

We would remove other information in current 12.00C2 about social functioning because we include it and give it more general application elsewhere in the proposed introductory text. For example, current 12.00C2 refers to social functioning as the "capacity to interact independently, appropriately, effectively, and on a sustained basis with other people," and explains that "[w]e do not define 'marked' by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function." These two general statements apply to the rating of impairment-related limitations for all the paragraph B criteria, not just social functioning. Therefore, in these proposed rules, we revise the statements slightly and include them in proposed 12.00D, where we define "marked" and "extreme" limitations for all four of the paragraph B mental abilities.

Proposed 12.00C3—Concentrate, Persist, and Maintain Pace (Paragraph B3)

The proposed paragraph B3 criterion is the same as the current paragraph B3 criterion, "maintaining concentration, persistence, or pace," except that we propose to change "or" to "and." This would not be a substantive change in the paragraph B3 criterion, but only a clarification of the overall requirement. In a work setting, just as a person is expected to understand, remember, *and* apply information, he or she is also expected to be able to concentrate, persist, *and* maintain pace.

We propose to move some of the information in current 12.00C3 to other sections of the proposed introductory text because the information includes useful guidance that applies to all of the proposed paragraph B criteria. For example, there is detailed information about clinical examinations, psychological testing, mental status examinations, and work evaluation, but we would consider these types of evidence when we assess limitations in the other paragraph B criteria too. For this reason, we propose to provide all the guidance about the medical and nonmedical evidence we may consider under these listings in proposed 12.00G, What evidence do we need to evaluate your mental disorder?

We include information from the fifth paragraph of current 12.00C3 about "marked" limitation in proposed 12.00D1c. We also elaborate on what we mean by using a mental ability independently, appropriately, effectively, and on a sustained basis to function in a work setting.

Proposed 12.00C4—Manage Oneself (Paragraph B4)

The proposed paragraph B4 criterion would include aspects of functioning that we currently consider when we assess RFC, such as the ability to respond to demands and changes in the workplace. It reflects the critical role that self-management plays in being able to function independently, appropriately, effectively, and on a sustained basis in a work setting. It also includes the aspects of the current paragraph B1 criterion (activities of daily living) that deal with health and safety, as described in current 12.00C1.

Proposal To Remove the Current Paragraphs B1 and B4 Criteria

We propose to remove the current paragraph B1 criterion, activities of daily living (ADLs), because limitations in ADLs are the manifestation of limitations of any one, several, or sometimes all, of the four mental abilities in these proposed rules. For example, a person may have difficulty using public transportation or shopping (both of which are examples of ADLs in current 12.00C1) because of limitation of the ability to understand, remember, and apply information, the ability to interact with others, or both. These ADLs may also be limited by problems with the ability to concentrate or persist, or with the ability to manage oneself. Therefore, we do not believe that limitations in ADLs should be considered in a single separate area. Rather, we would use information about how the person functions in his or her ADLs, together with other information in the case record, to determine how the proposed four mental abilities are affected by the person's mental disorder. Since these abilities are necessary to function in a work setting, we would then be able to more realistically determine a person's capacity for work, even in situations in which he or she is not working or has never worked.

We describe the current paragraph B4 criterion—repeated episodes of decompensation, each of extended duration—in current 12.00C4 as "exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning." We also explain that loss of adaptive functioning is manifested by difficulties in performing ADLs (current paragraph B1), maintaining social relationships (current paragraph B2), or maintaining concentration, persistence, or pace (current paragraph B3). Therefore, we seldom use the paragraph B4 criterion because we define it in terms of the first three current paragraph B criteria. This same redundancy would exist if we kept the paragraph B4 criterion with the proposed criteria.

We recognize that most mental disorders are subject to periods of exacerbation; therefore, in proposed 12.00G6, we continue to require adjudicators to consider temporary increases in symptoms and signs and their effect on a person's functioning over time when they rate limitations of the proposed paragraph B criteria. In the proposed paragraph C criteria, we would also continue to factor in a history of episodes of deterioration, as we explain below.

Proposed 12.00D—How do we use the paragraph B mental abilities to evaluate your mental disorder?

In this section, we propose to consolidate a provision that is in current 12.00A with guidance about rating impairment severity that appears in several different sections of current 12.00C. For example, in current 12.00C1, C2, and C3, we explain "We do not define 'marked' by a specific number of activities [or behaviors or tasks] in which functioning is impaired, but by the nature and overall degree of interference with function." Instead of stating it three times, we include this guidance in a single section, proposed 12.00D1c. We also propose to include guidance from our childhood disability rules that is applicable to evaluating mental disorders in adults and children.

Proposed 12.00D1

In this section, we provide general information about the paragraph B mental abilities. For example, we explain that:

- "Marked" or "extreme" limitation reflects the overall degree to which a mental disorder interferes with a person's use of an ability and does not necessarily reflect a specific type or number of activities that a person has difficulty doing.
- No single piece of information (including test scores) can establish whether a person has marked or extreme limitation.
- We consider the kind and extent of supports a person receives and the characteristics of any highly structured

setting in which the person spends time in order to function.

In proposed 12.00D1d, we state that the more extensive the supports or the more structure a person needs in order to function, the more limited we will find the person to be. This is a principle that we use in the childhood disability rules, and it is applicable to adults as well.[24]

Proposed 12.00D2—What We Mean By "Marked" Limitation

The proposed definition of "marked" limitation generally corresponds to the definitions in current 12.00C and 112.00C. We also incorporate provisions from § 416.926a, the regulation for functional equivalence for children, which provides a more detailed definition of the term than we do in the current mental disorders listings and which we propose to apply to adults.

One of the provisions from § 416.926a(e) that we are including in this definition explains that "marked" is the equivalent of functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean. We added this provision to our functional equivalence rules in 2000[25] to codify guidance that we had given to our adjudicators during training.[26] We believe that this guidance is also useful for understanding the term as we apply it to adults and children under the mental disorders listings. A person whose functioning is two standard deviations below the mean is in approximately the second percentile of the population; that is, about 98 percent of the population functions at a higher level. It is also a meaningful concept to many mental health professionals.

We are not including in these proposed rules the description of "marked" as "more than moderate but less than extreme" from current 12.00C and 112.00C. Instead, we propose to use an explanation based on the language describing the rating scale for the Psychiatric Review Technique (PRT) in current §§ 404.1520a(c)(4) and 416.920a(c)(4) as a frame of reference to help define the terms "marked" and "extreme." The rules for the PRT describe "marked" as the fourth point on a five-point rating scale—none, mild, moderate, marked, and extreme. In the proposed rules, we explain that we do not require our adjudicators to use such a scale, but that "marked" would be the fourth point on a scale of "no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation." With this guideline, it is unnecessary to also state that "marked" falls between "moderate" and "extreme." We use the word "slight" instead of "mild" to make clear that it is at a level consistent with an impairment that is not "severe," as we explain the term in SSR 85–28,[27] and to preserve guidance that is consistent with the provision in current §§ 404.1520a(d)(1) and 416.920(a)(d)(1).

Proposed 12.00D3—What We Mean By "Extreme" Limitation

The proposed definition of "extreme" limitation is based on the definition in § 416.926a(e), and is in terms that are related to our definition of "marked." For example, while "marked" limitation can generally be shown by a score on a standardized test that is at least two, *but less than* three, standard deviations below the mean, "extreme" limitation can generally be shown by a score that is *at least* three standard deviations below the mean. As we do in § 416.926a(e), we also explain that, while "extreme" is the rating we give to the worst limitations, it does not necessarily mean a total lack or loss of ability to function. Similarly to proposed 12.00D2, we also propose to provide a guideline based on §§ 404.1520a(c)(4) and 416.920a(c)(4) that describes "extreme" as the last point on a five-point rating scale.

Proposed 12.00D4—How We Consider Your Test Results

In this proposed section, we would clarify how we intend for our adjudicators to consider test scores under listing 12.05 or any other listing; that is, that the other objective medical evidence and the other evidence about the effects of a mental disorder on a person's functioning must be consistent with the score. There continues to be confusion about the extent to which we rely on IQ scores in listing 12.05 or whenever we assess mental abilities or functioning with IQ tests or other kinds of tests.

We based the language of the proposed rule on our policy for considering test results when we determine disability in children under SSI. Sections 416.924a(a)(1)(ii) and 416.926a(d)(4). This general policy is applicable to our evaluation of test results in claims of adults and children with mental disorders as well; so, we are proposing to incorporate it in the mental disorders listings. We include similar policy statements in our current mental disorders listings. In current 12.00D5c, we state, "In considering the validity of a test result, we should note and resolve any discrepancies between formal test results *and the individual's customary behavior and daily activities*." (Emphasis added.) In current 12.00D6a, we state, "[S]ince the results of intelligence tests are only part of the overall assessment, the narrative report that accompanies the test results should comment on whether the IQ scores are considered valid and *consistent with the developmental history and the degree of functional limitation*" (emphasis added).[28] We believe, however, that the language in the childhood regulations is clearer and more comprehensive.

Proposed 12.00E—What are the paragraph C criteria, and how do we use them to evaluate your mental disorder?

Both the current and proposed paragraph C criteria are alternative severity criteria for situations in which a person has achieved only marginal adjustment, and the symptoms and signs of his or her mental disorder are diminished because of psychosocial supports or treatment. The current paragraph C criteria for listings 12.02, 12.03, and 12.04 require a "Medically documented history of a [specified chronic mental disorder] of at least 2 years' duration that has caused more than a minimal limitation of [the] ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support." They also require one of three criteria described, in part, as:

[24] *See,* for example, §§ 416.924a(b)(5)(ii) and (b)(5)(iv); Social Security Ruling (SSR) 09–1p, "Title XVI: Determining Childhood Disability Under the Functional Equivalence Rule—The 'Whole Child' Approach" (74 FR 7527 (2009)), available at: *http://www.socialsecurity.gov/OP_Home/rulings/ssi/02/SSR2009-01-ssi-02.html;* and SSR 09–2p, "Title XVI: Determining Childhood Disability—Documenting a Child's Impairment-Related Limitations" (74 FR 7625 (2009)), available at: *http://www.socialsecurity.gov/OP_Home/rulings/ssi/02/SSR2009-02-ssi-02.html.*

[25] 65 FR 54747, 54757.

[26] Childhood Disability Training, SSA Office of Disability, Pub. No. 64–075, March 1997.

[27] SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe," available at *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR85-28-di-01.html.*

[28] In current 12.00D5b, we also state that "a report of test results should include both the objective data and any clinical observations" that corroborate the data. This is another current rule that provides that we must consider whether the person's functioning is consistent with the test score, although in this case it is in a clinical setting. Since we are proposing to remove the detailed guidance about testing that is in current 12.00D, we are proposing a new section 12.00B4d in the introductory text that will continue to address this issue for IQ testing in ID/MR.

• Repeated episodes of decompensation, each of extended duration (C1);

• A residual disease process that has resulted in marginal adjustment (C2); or

• A current history of 1 or more years' inability to function outside a highly supportive living arrangement (C3).

We incorporate the same three criteria in the proposed rules, but we have simplified their content and application. For example, rather than counting the episodes of decompensation as required by current 12.00C4,[29] we simply require that the person have:

• A "serious and persistent" mental disorder with continuing treatment, psychosocial support, or a highly structured setting that diminishes the symptoms and signs of the disorder (proposed C1); and

• Marginal adjustment (proposed C2) as described in proposed 12.00E2c.

The description of marginal adjustment in proposed 12.00E2c includes essentially all of the current criteria, but is broader and, we believe, more accurate. We explain that marginal adjustment reflects a person's fragile existence in his or her environment, with minimal capacity to adapt to changes in the environment or demands that are not already part of his or her daily life. We believe that this approach more realistically reflects the nature of serious and persistent mental disorders.

The current paragraph C criterion for listing 12.06 "reflects the uniqueness of agoraphobia" (in current 12.00F) and requires the "complete inability to function independently outside the area of one's home." We continue to include this criterion under proposed listing 12.06C by providing in proposed 12.00E2c that "marginal adjustment" includes the inability to function "outside your home."

For accuracy and clarity, we propose to use the term "serious and persistent mental disorders" instead of "chronic mental impairments," as in current 12.00E. As used in the DSM–IV–TR, the word "chronic" is a "specifier" of certain mental disorders and provides information about the duration of certain diagnostic criteria. The duration varies by the disorder, and not all disorders have a "chronic" specifier. For example, the DSM–IV–TR uses "chronic" as a specifier for Posttraumatic Stress Disorder when symptoms last at least 3 months, but for a major depressive episode when the full criteria have been continuously met for 2 years. We are proposing to use a completely separate term from the DSM–IV–TR so there is no confusion. We also believe that the proposed term is more descriptive of what we intend by the paragraph C criteria.

The term "serious and persistent mental disorders," is also similar to the terms "serious and persistent mental illness," (SPMI), "serious mental illness," and other descriptions used widely in Federal and State statutes and regulations, and in other areas related to mental health treatment and services. These terms generally refer to the same kinds of serious, chronic illnesses for which we intend the paragraph C criteria; for example, schizophrenia, bipolar disorder, major depressive disorder, agoraphobia, panic disorder, and posttraumatic stress disorder. We do not propose to adopt the exact term "SPMI" or any specific definition from other sources because there is no standard definition for the term, and some definitions would be narrower than we intend.[30]

In proposed 12.00E2a, we explain that a "serious and persistent mental disorder" is established by a medically documented history of the existence of the disorder over a period of at least 1 year. In order to satisfy the proposed paragraph C criteria, a person with a serious and persistent mental disorder must satisfy two additional criteria. He or she:

• Must be in continuing treatment, have psychosocial supports, or be in a highly structured setting (paragraph C1); and

• Must have achieved "only marginal adjustment" as defined in paragraph C2.

These two provisions describe a very serious impairment. Anyone who has a mental disorder that has persisted for at least 1 year and that satisfies the paragraph C1 and C2 criteria will by definition have a "serious and persistent mental disorder."

To ensure that we make allowances based on the paragraph C criteria as quickly as possible, we would also provide in proposed 12.00E1 that our adjudicators can apply the paragraph C criteria without first considering whether the mental disorder satisfies the paragraph B criteria. Also, in proposed 12.00E2c, we use the word "deterioration" instead of "decompensation" in response to the public comments we have already described.

Proposed 12.00F—How do we consider psychosocial supports, highly structured settings, and treatment when we evaluate your functioning?

This section includes some of the information in the fourth paragraph of current 12.00C3 and current 12.00E, F, G, and H. We provide a greatly expanded list of examples of psychosocial supports and highly structured settings in proposed 12.00F2 and guidance about the effects of treatment in proposed 12.00F3. These changes respond to comments from several sources who recommended that the proposed rules should reflect the fact that controlling a person's symptoms with medications and community supports does not eliminate the underlying mental disorder and that we should not interpret evidence of a person's active involvement in a supported work setting by itself to mean that the person is not disabled.

Proposed 12.00G—What evidence do we need to evaluate your mental disorder?

Proposed 12.00G corresponds to the information in current 12.00D1 through D3; however, we have expanded the information from the current rules and reorganized it in what we believe is a more user-friendly format.

We have not included text corresponding to current 12.00B, Need for medical evidence, because the information in that section is unnecessary, appears in other regulations, or appears in other provisions of these proposed rules.[31] Also, the last two sentences of current 12.00B explain that symptoms and signs cluster together to constitute recognizable mental disorders described in the listings, and that the symptoms and signs may be intermittent or continuous. We believe this information is too general to be helpful and would be unnecessary in these proposed rules given the information we provide in proposed 12.00B. We also provide guidance about mental disorders that are subject to exacerbations and

[29] Three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks.

[30] For example, in 2003, the President's New Freedom Commission on Mental Health defined "adults with a serious mental illness" as "persons age 18 and over, who currently or at any time during the past year, have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within DSM–III–R that has resulted in functional impairment which substantially interferes with, or limits one or more major life activities." (Citation in the References section of this preamble. Footnotes omitted.) For our disability determination purposes, the 12-month duration requirement in the Act applies instead of the various duration requirements in the DSM specific to different mental disorders.

[31] For example, the rule in current 12.00B that we must establish the existence of a medically determinable impairment that meets the duration requirement also appears in §§ 404.1508, 404.1509, 404.1520, 416.908, 416.909, and 416.920 of our regulations.

remissions—that is, that can be intermittent—in proposed 12.00G6.

Likewise, we do not include the rule in the first paragraph of current 12.00D that the medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. We already have a provision that says essentially the same thing. Sections 404.1513(e) and 416.913(e).

Proposed 12.00G1—General

Proposed 12.00G1 explains that we need evidence to assess the existence and severity of a person's mental disorder and its effects on the person's ability to function in a work setting. We also include guidance about the evidence we need from acceptable medical sources [32] and other sources and include references to our basic rules on evidence and symptoms.

As we note below, we are proposing to remove current 12.00D4, which describes mental status examinations. However, we have included a sentence in proposed 12.00G1 that is based on the last sentence of current 12.00D4. The current sentence provides that the individual facts of a case determine the specific areas of mental status that must be emphasized during a mental status examination. We propose to revise that statement so that it applies to all evidence, not just mental status examinations; that is, to provide that individual case facts determine the type and extent of evidence we need to make our determination or decision. This will help to clarify that we do not need, and will not ask for, evidence from all of the sources we describe in 12.00G in every case.

Proposed 12.00G2—Evidence From Medical Sources

In proposed 12.00G2, we reorganize and expand the information in current 12.00D1a and incorporate information from current 12.00D1c to explain that we will consider all relevant evidence from the person's physician or psychologist and from other medical sources who are not "acceptable medical sources," such as therapists and licensed clinical social workers. We include information about other medical sources under the heading, "Evidence from medical sources," rather than "Other information," as in current 12.00D1c, because we consider these sources to be kinds of "medical sources" under §§ 404.1513(d)(1) and 416.913(d)(1) of our regulations. While only certain persons, such as physicians and licensed or certified psychologists, are "acceptable medical sources," we agreed with commenters who said that we should emphasize the role that other medical sources can play in our disability evaluations. For this reason, we also provide that evidence from other medical sources can be "especially helpful" to our assessment of the severity of mental disorders and their effects on functioning. This provision is consistent with guidance we provide in SSR 06–3p.[33]

We also provide an expanded list of the types of evidence that may be available from medical sources. The list includes the information in current 12.00D1a regarding cultural background and sensory, motor, and speaking abnormalities that may affect our evaluation of a person's mental disorder. Finally, we do not include information from current 12.00D1a that only repeats provisions of our other regulations.

We propose to remove current 12.00D4, which discusses the mental status examination in detail. Current 12.00D4 does not provide any rules for our adjudicators to apply, and the elements of the mental status examination are more thoroughly and effectively described in standard psychiatric and psychological textbooks. We also provide guidance about the elements of mental status examinations in the booklet, *Consultative Examinations: A Guide for Health Professionals.*[34] In the proposed rules, we list the mental status examination as one aspect of the evidence we typically expect from medical sources.

We also propose to remove current 12.00D11, which describes the documentation needed for specific anxiety disorders. Although the paragraph uses words that are specific to anxiety disorders, it does not require anything that we would not ordinarily require to evaluate other mental disorders. For example, it requires information about a typical reaction, and if there are panic attacks, a description of the nature, frequency, and duration of the attacks, the precipitating and aggravating factors, and the functional limitations that result. This is a description of how we evaluate any impairment that is subject to exacerbations, and we would consider the same kinds of information in evaluating any such mental disorder. It is also similar to our rules for evaluating symptoms in §§ 404.1529 and 416.929. Likewise, the information in the paragraph about descriptions of a person's anxiety reaction from medical and other sources is already covered by other rules, including proposed 12.00G, in which we would provide extensive information about the kinds of evidence we may obtain from medical and other sources.

Proposed 12.00G3—Evidence From You and Persons Who Know You

Proposed 12.00G3 corresponds to current 12.00D1b and the second sentence of current 12.00D1c. In the proposed rule, we have simplified the language and removed unnecessary statements.

Proposed 12.00G4—Evidence From School, Vocational Training, Work, and Work-Related Programs

Proposed 12.00G4 generally corresponds to the last sentences of current 12.00D1c and 12.00D3, but we propose to add information about school evidence and to expand the information about vocational training and work-related programs. We also explain that we will consider information from work attempts or current work activity when we need it to show the severity of a person's mental disorder and how it affects his or her ability to function.

Proposed 12.00G5—Evidence From Psychological and Psychiatric Measures

We propose to remove the detailed information on psychological testing in current 12.00D5 through D9 because most of this information is educational and procedural, and tests are constantly being revised and updated. Instead, we would provide general and policy-related test information in an SSR.[35] Therefore, in this section we would explain only in general terms how we consider the results of psychological and psychiatric measures.

Proposed 12.00G6—Need for Longitudinal Evidence

Proposed 12.00G6 generally corresponds to current 12.00D2, although we have slightly expanded the

[32] "Acceptable medical sources" are physicians, licensed or certified psychologists, and certain other types of medical sources who can provide evidence to establish the existence of a medically determinable impairment. Sections 404.1513(a) and 416.913(a).

[33] SSR 06–3p, "Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not 'Acceptable Medical Sources' in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies," 71 FR 45593 (2006). Also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2006-03-di-01.html.*

[34] SSA Pub. No. 64–025, November 1999. Available at: *http://www.socialsecurity.gov/disability/professionals/greenbook/index.htm.*

[35] However, we are proposing to include a provision that explains how we decide whether an IQ test score is "valid" in proposed 12.00B4d and general guidance for considering test results in proposed 12.00D4.

provisions and changed some of the terms we use. In 12.00G6a, we explain that we will consider how a person functions longitudinally, taking into consideration any periods of exacerbation or remission. We explain that we will not make a determination based solely on periods of exacerbation or remission, but will consider all factors related to these occurrences and any other relevant evidence so that we understand how a person functions over time.

Proposed 12.00G6b is new. It explains that, if a person has a serious mental disorder, we would expect there to be evidence of its effects on his or her functioning over time, even if the person does not have an ongoing relationship with the medical community. Such evidence could come, for example, from family members, neighbors, or former employers.

Proposed 12.00G6c generally corresponds to the fourth paragraph of current 12.00C3. It explains that a person's ability to function in an unfamiliar or one-time situation, such as a consultative examination, does not necessarily show how he or she will be able to function in a work setting under the stresses of a normal workday and workweek on a sustained basis.

Proposed 12.00G6d is new. It explains how we consider the effects of stress. We based the proposed provisions on guidance in SSR 85–15.[36] Although this SSR is specifically about evaluating disability at step 5 of the sequential evaluation process, its guidance about stress is also relevant to other steps of the process.

Proposed 12.00H—How do we evaluate substance use disorders?

We propose to add this section because we are also proposing to remove listing 12.09, Substance addiction disorders, for reasons we explain later in this preamble. We explain the requirement in the Act and our regulations [37] that, if we find a person disabled and there is medical evidence establishing a substance use disorder, we must determine whether the disorder is a contributing factor material to the determination of disability. We also include a reference to our rules for this policy. Sections 404.1535 and 416.935.

12.00I—How do we evaluate mental disorders that do not meet one of the mental disorders listings?

Although this proposed section would be new to the mental disorders listings, it is in large part similar to guidance we provide in other body systems; for example, 4.00I3 (Cardiovascular System), 8.00H (Skin Disorders), and 13.00F (Malignant Neoplastic Diseases). We also explain that a mental disorder may cause a physical impairment(s) and how we would evaluate such an impairment(s). We include an example of a cardiovascular impairment that results from an eating disorder to clarify the guidance in current 12.00D12 (Eating Disorders), which reminds adjudicators to consider the physical consequences of eating disorders.

12.01 Category of Impairment, Mental Disorders

Proposal To Remove the Introductory Paragraphs and Paragraph A Criteria

We believe that the current paragraph A criteria in each listing (except for current listing 12.05) are too prescriptive; they omit from the listings mental disorders that we often see in disability claims. The proposal to remove the paragraph A criteria would make the listings more comprehensive by including any and all mental disorders that can be identified within a listing category. By including such disorders, we would address questions from our adjudicators about which listings to use to evaluate some mental disorders not described by the current paragraph A criteria. The proposed change would also make the mental disorders listings consistent with many of our other listings. For example, we have a number of musculoskeletal and neurological listings that describe categories of impairments rather than specific diagnoses. As in the proposed mental disorders listings, listing-level severity in these listings is shown by limitations of functioning.

The proposed changes would also respond in part to the many commenters on the ANPRM who suggested specific mental disorders that we should add to the current listings. While adding names of specific mental disorders to the listings would broaden their scope somewhat, it could still omit some mental disorders within each listing category. The proposed rules allow us to include the disorders the commenters asked us to add and more.

The proposed change would also simplify our adjudication of some allowances by reducing the number of cases in which we must make more labor-intensive determinations of medical equivalence. For example, because of the paragraph A criteria, we do not list dysthymic disorder and cyclothymic disorder in current listing 12.04; when these relatively common mental disorders are of listing-level severity, we must make a finding of medical equivalence to listing 12.04 and explain why they medically equal the listing. Under the proposed rules, if a person with one of these disorders has limitations in functioning that satisfy the paragraph B or paragraph C criteria, the disorder would meet listing 12.04.

In drafting these proposed rules, we were mindful of possible concerns that the listings would no longer provide specific criteria that adjudicators could identify in order to establish the existence of a specific mental disorder under a listing. For example, we considered whether our adjudicators might need to refer to the DSM more often and whether administrative law judges (ALJs) might have to use more medical experts at hearings. We do not believe that the proposed rules should be a cause for these kinds of concerns because our adjudicators already make determinations about the nature of mental disorders apart from the issue of "meeting" listings, and the proposed listings put less emphasis on the need to establish a specific diagnosis than the current rules do. In this regard, adjudicators would only continue to do what they do now: we do not believe that they will need to consult the DSM or that ALJs will need medical expert testimony with greater frequency.[38] The major difference will be that, after determining the existence and nature of the mental disorder, our adjudicators will not then have to make findings about whether there is evidence demonstrating specific paragraph A criteria prescribed in each of the current listing categories. This change will simplify our current rules.

Proposed Changes to Specific Listings in This Body System

Proposed Listing 12.05

We propose to make minor editorial revisions in current listing 12.05. As we show in the chart below, current listing 12.05 starts with an introductory paragraph that provides our diagnostic description of mental retardation. The

[36] SSR 85–15, "Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules As a Framework for Evaluating Solely Nonexertional Impairments," available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR85-15-di-02.html.*

[37] Sections 223(d)(2)(C) and 1614a(3)(J) of the Act; §§ 404.1535 and 416.935 of the regulations. In drafting this rule, we also considered whether to propose revisions and updates to §§ 404.1535 and 416.935. We decided that, if we propose revisions to those rules, we should do so in a separate NPRM.

[38] The DSM also includes many diagnoses that are characterized as "NOS": Not Otherwise Specified. Partly because of these diagnoses, we expect that there will be fewer issues about whether a person has a particular kind of mental disorder that requires additional development or rationale to explain the finding about the nature of the disorder.

current listing also includes four sets of severity criteria (paragraphs A through D). If a person's mental disorder satisfies the diagnostic description in the introductory paragraph and any one of the four sets of criteria, we find that it meets the listing. As with all of the other mental disorders listings, we propose to remove the introductory paragraph of listing 12.05. Unlike in the other listings, however, we would incorporate by reference two of the elements of the diagnostic description ("significantly subaverage general intellectual functioning" and "significant deficits of adaptive functioning") into each of the proposed listings by requiring that a person demonstrate ID/MR "as defined in 12.00B4." Although we have clarified the current listing on several occasions—both in the listing itself and in other instructions—there continues to be some confusion about whether a person's impairment must satisfy the definition of "mental retardation" in the introductory paragraph of listing 12.05 and what that definition means. We hope to lessen that confusion by including a reference to the definition within each section of listing 12.05.

Below is a chart comparing current listing 12.05 with our proposed changes:

Current listing 12.05	Proposed listing 12.05
12.05 Mental retardation: Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; *i.e.*, the evidence demonstrates or supports onset of the impairment before age 22.	12.05 Intellectual Disability/Mental Retardation (ID/MR) satisfying A, B, C, or D.
The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.	
A. Mental incapacity evidenced by dependence upon others for personal needs (*e.g.*, toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;	A. ID/MR as defined in 12.00B4, with mental incapacity evidenced by dependence upon others for personal needs (for example, toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded.
OR	OR
B. A valid verbal, performance, or full scale IQ of 59 or less;	B. ID/MR as defined in 12.00B4, with a valid IQ score of 59 or less (as defined in 12.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 12.00D4).
OR	OR
C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;	C. ID/MR as defined in 12.00B4, with a valid IQ score of 60 through 70 (as defined in 12.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 12.00D4) and with another "severe" physical or mental impairment (*see* 12.00B4e).
OR	OR
D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following: 1. Marked restriction of activities of daily living; or 2. Marked difficulties in maintaining social functioning; or 3. Marked difficulties in maintaining concentration, persistence, or pace; or 4. Repeated episodes of decompensation, each of extended duration.	D. ID/MR as defined in 12.00B4, with a valid IQ score of 60 through 70 (as defined in 12.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 12.00D4), resulting in *marked* limitation of at least two of the following mental abilities: 1. Ability to understand, remember, and apply information (*see* 12.00C1). 2. Ability to interact with others (*see* 12.00C2). 3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3). 4. Ability to manage oneself (*see* 12.00C4).

Proposed listing 12.05D corresponds to current listing 12.05D, but refers to the proposed paragraph B criteria instead of the current paragraph B criteria. Otherwise, it is the same as the current listing.

Proposal To Remove Current Listing 12.09

We propose to remove current listing 12.09, Substance Addiction Disorders, because it is a reference listing. Reference listings refer to criteria in other listings and are redundant because we use the other listings to evaluate disability. For example:

- An impairment meets current listing 12.09A by meeting the criteria for any listing under 12.02 for organic mental disorders.
- An impairment meets current listing 12.09F by meeting the criteria in listing 5.05 for chronic liver disease.

In both cases, claimants who qualify under these listings would still qualify under the listings to which they cross-refer, provided that their substance use disorders are not material to our determination of disability. We have been removing reference listings from all of the body systems as we revise them, and the changes we are proposing in this NPRM would be consistent with that approach.[39]

If we remove listing 12.09, we would also remove the fifth paragraph of current 12.00A, because it explains how listing 12.09 is structured. As we have already noted, however, we are proposing a new section 12.00H that would briefly state our policy on how, in our disability determinations, we consider the effects of substance use disorders. The proposed section would also provide a cross-reference to our rules for determining whether a substance use disorder is a contributing factor material to disability. Sections 404.1535 and 416.935.

Proposed Listings 12.11 and 12.13

Proposed listing 12.11, Other Disorders Usually First Diagnosed in Childhood or Adolescence, is based on the first diagnostic category in the DSM–IV–TR and would correct some omissions in our current listings.

[39] Examples of relatively recent such changes include the "Revised Medical Criteria for Evaluating Digestive Disorders," 72 FR 59398 (October 19, 2007), and the "Revised Medical Criteria for Evaluating Immune System Disorders," 73 FR 14570 (March 18, 2008).

Proposed listing 12.13, Eating Disorders, would provide a listing for adults that corresponds to a childhood listing we have had since 1990. We agreed with several commenters on the ANPRM who asked us to add a listing for eating disorders in adults since we use childhood listings only for persons who are under age 18 (including persons who are nearly age 18), but persons age 18 and older also have these disorders. As a consequence of this proposed change, we would also remove most of the guidance we now provide in 12.00D12 because we would no longer need it.

Under our current listings, adjudicators can find that the disorders we would cover under proposed listings 12.11 and 12.13 medically equal a listing. Thus, the principal effect of adding these listings would be to streamline our processing of cases that involve these impairments.

Proposed 112.00—Introductory Text to the Childhood Mental Disorders Listings

We repeat much of the introductory text of proposed 12.00 in the introductory text of proposed 112.00. This is because the same basic rules for evaluating mental disorders in adults also apply to mental disorders in children from birth to the attainment of age 18. Because we have already described these provisions above, the following discussions describe only those provisions that are unique to the childhood rules or that require further explanation. We describe only the major provisions pertinent to 112.00. For example, we do not explain:

- References to "children" instead of adults;
- References to a child's ability to do age-appropriate activities, as opposed to an adult's ability to function in a work setting;
- References to the functional equivalence provision at step 3 of the sequential evaluation process for children instead of steps 4 and 5 of the process for adults; and
- Examples for children that are different from the examples we provide for adults, such as the information about the listing categories in 12.00B and 112.00B.

As a result of replacing all of current 112.00A with text that is the same as, or similar to, proposed 12.00A and B, we would remove the following provisions, among others:

- The second paragraph of current 112.00A, which explains that there are certain diagnostic categories applicable only to children and that the presentation of mental disorders in children differs significantly from the signs and symptoms of the same disorders in adults. These explanations in the current rules ensure that adjudicators appropriately evaluate medically determinable mental disorders in children. In the proposed rules, we describe such differences more specifically in proposed 112.00B; for example, we include examples of early childhood eating disorders (proposed listing 112.13) that are not appropriate for the adult listing. We also provide age-appropriate paragraph B criteria for infants and toddlers in proposed 112.00I.
- The seventh paragraph of current 112.00A, which explains why we do not include separate paragraph C criteria in current listings 112.02, 112.03, 112.04, and 112.06. We would not need this paragraph because we are now proposing to include the same paragraph C criteria in the childhood listings that we propose for the adult rules.

Proposed 112.00I

In proposed 112.00I of the introductory text—How do we use 112.14 to evaluate developmental disorders of infants and toddlers from birth to attainment of age 3?—we include the same kinds of information for infants and toddlers as we do for older children in the other sections of the introductory text. For example, we describe "developmental disorders" and define the four proposed paragraph B criteria for infants and toddlers and the terms "marked" and "extreme" for this age group.[40] We also include information about how we consider supports an infant or toddler receives.[41]

In proposed 112.00I2, we describe only the broad characteristics of developmental disorders rather than specific characteristics of any particular medically determinable impairment that would be identified as a developmental disorder. Unlike the proposed adult listing categories and the other proposed child listing categories—which include related kinds of mental disorders under each listing category—proposed listing 112.14 would include several kinds of unrelated disorders; for example, pervasive developmental disorders, developmental coordination disorder, and "developmental delay." We believe that any summary of the symptoms and signs associated with the various disorders we would evaluate under proposed listing 112.14, however brief, would be too lengthy.

In proposed 112.00I6, we would expand our rules for deferring a determination for infants, now in current 112.00D2. The provisions recognize that young infants typically experience some irregularities in observable behaviors (such as sleep cycles, attending to faces, and self-calming), which can make it difficult to document the presence, severity, or duration of a developmental disorder(s). In some cases, deferring our determination allows us to obtain a longitudinal medical history and, if necessary, standardized developmental testing. The rule in proposed 112.00I6a addresses full-term infants who have not attained age 6 months, while proposed 112.00I6b addresses infants who were born prematurely. We also propose to update the rule for premature infants to reflect our rules in § 416.924b(b) for adjusting age for prematurity.

Current 112.00D2 provides that we may defer adjudication for full-term infants until they are 3 months old and to an unspecified older age for premature infants. We propose to change this rule to say that, when we must defer adjudication in these claims, we will wait until the child is at least 6 months old regardless of whether he or she was born full term or prematurely. We would use chronological age for full-term infants and corrected chronological age for premature infants. Based on our adjudicative experience and the information we obtained when we developed these proposed rules, we believe that 3 months is inadequate to establish whether some infants have listing-level developmental disorders. However, we also explain in proposed 112.00I6c that we will not always defer adjudication. There will be many cases in which we can determine that an infant younger than age 6 months has a developmental disorder that meets or medically equals proposed listing 112.14 or a listing in another body system or a combination of impairments that functionally equals the listings. There will also be cases in which we can determine that a child is not disabled before age 6 months. We would defer adjudication only when it appears that an infant has a significant developmental delay but we need to wait so that we can get adequate evidence to be sure of our determination.

[40] We define the terms "marked" and "extreme" as they apply to infants and toddlers in proposed 112.00I4c, d, e, and f. The definitions generally reflect those in the functional equivalence regulation.

[41] We also address issues related to developmental disorders in proposed 112.00G, the section on evidence.

112.01 Category of Impairment, Mental Disorders

The proposed childhood listing categories are the same as the adult categories, except that we are also proposing new listing 112.14 for children from birth to the attainment of age 3. As a consequence of this new listing, we would also remove listing 112.12, which is for children from birth to the attainment of age 1. As we noted earlier, we describe only those provisions that are unique to the childhood rules.

Proposed Listing 112.05

Proposed listing 112.05 is the same as proposed listing 12.05. As in all the other proposed listings, we are making changes to remove references to children under age 3 because of our new proposed listing 112.14, which is for all children from birth to the attainment of age 3.

Current listing 112.05 has six paragraphs, designated A through F. We propose to remove listings 112.05A and F so that listings 112.05 and 12.05 are the same. Current listings 112.05B, C, D, and E correspond to current adult listings 12.05A, B, C, and D. As we have already explained, we are proposing to keep current listings 12.05A, B, C, and D with minor changes we have already described, and we would do the same for children, redesignating the listings so they have the same letters; for example, current listing 112.05B would become listing 112.05A and current listing 112.05E would become listing 112.05D. There are also minor differences between the proposed child and adult rules because we need to use language specific to children.

We would remove current listing 112.05A and F because we do not believe we need them. Current listing 112.05A would be redundant of other proposed listings. A child age 3 or older with ID/MR has a mental disorder that meets this listing with "marked" limitations in at least two of the current paragraph B functional criteria for children. Under proposed 112.05B, a child with ID/MR with a valid IQ of 59 or less would have an impairment that meets the listing without reference to the paragraph B functional criteria.[42] Under proposed 112.05D, a child with ID/MR with an IQ of 60 to 70 and "marked" limitations in two of the proposed paragraph B criteria would have an impairment that meets that listing.[43] Thus, proposed listings 112.05B and D would cover any child with ID/MR who could qualify under current listing 112.05A.

Current listing 112.05F is a variation on current listing 112.05D, the listing for children who have ID/MR with an IQ of 60–70 and another "severe" physical or mental impairment. Instead of requiring an IQ of 60–70, current listing 112.05F requires that the child have a "marked" limitation of the first paragraph B criterion, "cognitive/communicative function." In our adjudicative experience, we do not see cases of children whose impairments meet this listing. In the unlikely event that we receive a claim in which a child appears to have ID/MR but has not had IQ testing, we will purchase IQ testing to determine whether the impairment meets proposed listing 112.05C unless we can find that the child is disabled on some other basis, such as under our rules for functional equivalence in § 416.926a.

Proposal To Remove Listing 112.09

Current listing 112.09, Psychoactive Substance Dependence Disorders, is different from current listing 12.09 in that it is not a reference listing; rather, it consists of an introductory paragraph and paragraph A and B criteria. We are proposing to remove it because children with substance use disorders must satisfy the same requirement that applies to substance use disorders in adults; that is, if we find that a child is disabled, we must also determine whether the child's substance use disorder is a contributing factor material to our determination of disability. Section 416.935. When we find that a child is disabled because of a substance use disorder that meets listing 112.09, the substance use disorder is always material to the determination of disability, and a child cannot qualify for benefits based on a mental disorder that meets listing 112.09.

Proposed Listing 112.14—Developmental Disorders of Infants and Toddlers

We propose to replace current listing 112.12, Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to attainment of age 1), with a new listing 112.14, Developmental Disorders of Infants and Toddlers, that we will use to evaluate these disorders in children from birth to the attainment of age 3. We would no longer have separate criteria for children from age 1 to the attainment of age 3 in the other mental disorders listings because we would evaluate all mental disorders for children in that age group under proposed listing 112.14.

How We Evaluate Children From Birth to Age 3 Under the Current Listings

Current listing 112.12 includes four areas for rating severity in children from birth to age 1: Cognitive/communicative functioning; motor development; apathy, over-excitability, or fearfulness; and social interaction. We evaluate the mental disorders of children age 1 to the attainment of age 3 under the same listings as for older children; that is, current listings 112.02 through 112.11. However, we provide separate severity criteria for this age group and only three paragraph B criteria: Motor development, cognitive/communicative function, and social function.

Children in both groups (birth to the attainment of age 1 and age 1 to the attainment of age 3), can qualify under the current listing by showing extreme limitation of one paragraph B criterion or marked limitations of two. For both age groups, we define the severity ratings in terms of the attainment of developmental milestones: for extreme limitation, the attainment of development or functioning at a level generally acquired by children no more than one-half the child's chronological age, and for marked limitation, the attainment of development or functioning at a level generally acquired by children no more than two-thirds the child's chronological age.

Proposed Listing 112.14

Proposed listing 112.14 is similar in structure to the other proposed listings for children and adults. It would require a child to have a developmental disorder that results in extreme limitation in using one, or marked limitations in using two, developmental abilities to acquire and maintain the skills a child needs to function age-appropriately. The four proposed paragraph B criteria for this age group are:

- The ability to plan and control motor movement (paragraph B1),
- The ability to learn and remember (paragraph B2),
- The ability to interact with others (paragraph B3), and
- The ability to regulate physiological functions, attention, emotion, and behavior (paragraph B4).

These criteria are similar to the current severity criteria for both age groups and describe the developmental

[42] This redundancy occurs in the current listing too.

[43] Although the rule is less clear, this redundancy also occurs in the current listing. Current listing 112.05E requires a "valid" IQ of 60–70, which means that the child must have a "marked" limitation in the first paragraph B criterion for children, "cognitive/communicative function." The rest of current listing 112.05E requires a "marked" limitation in one of the three remaining paragraph B criteria.

abilities typically assessed in children from birth to age 3.

• The proposed paragraph B1 criterion would serve the same function as the "motor" criteria for children from birth to age 1 in current listing 112.12B and age 1–3 in current listing 112.02B1a.

• The proposed paragraph B2 criterion would address abilities covered in "cognitive/communicative functioning" in current listings 112.12A and 112.02B1b.[44]

• The proposed paragraph B3 criterion would address the ability covered in "social function" in current listings 112.12D and 112.02B1c.

• The proposed paragraph B4 criterion would address the problems with self-regulation in current listing 112.12C, "Apathy, over-excitability, or fearfulness, demonstrated by an absent or grossly excessive response to visual, auditory, or tactile stimulation."

The fourth proposed paragraph B criterion would also allow us to consider more developmental issues than we now do under listing 112.12C. It reflects recent literature regarding early child development.[45]

We are proposing to evaluate infants and toddlers in a single age grouping for several reasons. We believe that, from the perspective of medical evaluation and diagnosis, the developmental period of birth to the attainment of age 3 is better viewed as a continuum rather than two distinct age groups. We also believe that it is more appropriate to consider children age 1–3 in terms of their development and "developmental disabilities" or "developmental disorders," not of the mental disorder categories that we propose to use for older children and adults. Medical and health care professionals in the field of infant and early childhood mental health have not reached consensus on appropriate mental disorder diagnoses for this age group. Except in cases involving the most profound and obvious impairments, many pediatricians and developmental specialists prefer to wait until a child is age 3 or older before making a definitive diagnosis; in cases of children who are under age 3, we often see a diagnosis of "developmental delay."

We propose to use the term "developmental disorders" instead of the term in current listing 112.12, "emotional and developmental disorders," because we believe it is sufficiently broad to encompass all aspects of a young child's development, including emotional disorders.

The proposed paragraph B developmental abilities for children from birth to age 3 are also related to the proposed paragraph B mental abilities for children ages 3–18:

• The ability to learn and remember corresponds to the paragraph B1 criterion for children age 3–18, the ability to understand, remember, and apply information.

• The ability to interact with others is the same as the paragraph B2 criterion for children age 3–18.

• The ability to regulate physiological functions, attention, emotion, and behavior corresponds to the proposed paragraphs B3 and B4 criteria for children age 3–18. We would combine these abilities under one criterion to reflect clinical practice and the fact that the abilities are differentiated less well in children from birth to age 3. When a child attains age 3, we would assess his or her ability to regulate attention under the proposed B3 criterion for children age 3 and older (the ability to concentrate, persist, and maintain pace) and the child's ability to regulate physiological functions, emotion, and behavior under the proposed B4 criterion for such children (the ability to manage oneself).

Why are we proposing to remove §§ 404.1520a and 416.920a, Evaluation of Mental Impairments?

In the 1985 rules, we introduced the PRT as an adjudicative tool for evaluating disability in adults due to mental disorders.[46] Sections 404.1520a and 416.920a. The purpose of the technique was to help our adjudicators organize and evaluate all the findings in the case to ensure fair and equitable disability evaluations. There was concern at the time that the new listings were novel and complex, so in conjunction with the publication of the new adult mental disorder listings in 1985, we also mandated in the regulations the use of a "standard document," called the Psychiatric Review Technique Form or "PRTF" (SSA–2506–BK), to ensure that adjudicators at all levels of administrative review would properly apply the new listings.

We are now proposing to remove these sections because we believe that we will no longer need the PRT if we publish the proposed listings. Although not exclusively for applying the listings, the PRT is mostly related to the use of the listings, and the changes we are proposing would make the PRT less useful in this regard. For example, most pages of the PRTF restate the paragraph A diagnostic criteria from the current listings, and we do not have such criteria in the proposed listings.[47] Our adjudicators can record the other findings associated with the PRT and the PRTF (for example, how they rate the paragraph B criteria and whether an RFC assessment is needed) on other documents. In fact, in 2000 we removed the requirement for ALJs and the Appeals Council to complete the PRTF because they already explain in their decisions how they apply the PRT rules.[48] We also plan to provide standard electronic decision templates at all levels of review, and these templates will document the findings in mental disorder determinations and decisions at each of the relevant steps of our process for determining disability. We already use such templates in decisions at the hearing level of our administrative review process.[49]

There are provisions of §§ 404.1520a and 416.920a that we are proposing to keep in the same or similar form in other sections of these proposed rules, as follows:

1. In current §§ 404.1520a(e)(1) and 416.920a(e)(1), we provide that State agency medical and psychological consultants have the overall responsibility for assessing the medical severity of mental impairments. We also provide that a State agency disability examiner may assist in preparing the PRTF; however, the medical or psychological consultant with overall responsibility for assessing the mental impairment must review and sign the document to attest that it is complete and that he or she is responsible for its content. We also provide rules requiring disability hearing officers, ALJs, and the Appeals Council (when the Appeals Council makes a decision), to document how they applied the PRT in their determinations and decisions.

We believe that, with appropriate changes to reflect the removal of the

[44] In those two listings, for children from birth to age 3 for whom standardized intelligence testing may not be appropriate because of the child's young age or condition, we can use evidence about the child's communication as an alternative to, or proxy for, evidence about the child's cognitive functioning, which is the focus of the area of "cognitive/communicative functioning."

[45] *See* the References section of this preamble.

[46] We never extended the use of the PRT to children.

[47] It would also not be useful to have a form that repeats the examples and summary guidance in proposed 12.00B since the examples and summaries are primarily informational. As we explained earlier in this preamble, proposed 12.00B generally provides only examples to illustrate the kinds of mental disorders that are included in the listing categories.

[48] 65 FR at 50757–58.

[49] The system of templates used at the hearing level is called "Findings Integrated Templates," or FIT. You can read about FIT at: *http://www.socialsecurity.gov/appeals/fit/.*

PRT and PRTF, the provisions in §§ 404.1520a(e)(1) and 416.920a(e)(1) would still be useful if we put them in terms that apply to our adjudication of cases involving mental disorders under these proposed listings and at other steps of the sequential evaluation process. For example, instead of providing that State agency disability examiners may assist medical and psychological consultants in preparing the PRTF, we would provide that State agency disability examiners may assist in reviewing the claim and preparing documents that contain the medical portion of the case review and any applicable RFC assessment. The proposed revisions are in §§ 404.1503, 404.1615, 416.903, and 416.1015 and would apply to both adults and children.

2. In current §§ 404.1520a(e)(3) and 416.920a(e)(3), we provide that, if an ALJ:

- Requires the services of a medical expert to assist in applying the PRT, but
- Such services are not available,

the ALJ may return the case to the State agency for completion of a PRTF under the provisions of §§ 404.941 and 416.1441. Although we would no longer have a PRT or PRTF under these proposed rules, we propose to include a provision in §§ 404.941 and 416.1441 that would let ALJs continue to ask State agency medical and psychological consultants to evaluate claims involving mental disorders when they need the services of a medical expert and no expert is available.

We would not keep the guidance in §§ 404.1520a(d)(1) and 416.920a(d)(1) about ratings that indicate that a mental disorder is "not severe" because we would no longer have the PRT and its rating system. We also believe that the guidance is unnecessary since it provides only that persons who have no limitations or only mild limitations probably have impairments that are "not severe." This guidance only restates in language specific to mental disorders what our other rules already provide. See, for example, §§ 404.1520(c), 404.1521, 416.920(c), and 416.921 of our regulations.

If we remove §§ 404.1520a and 416.920a, we would also remove current 12.00I, "Technique for reviewing evidence in mental disorders claims to determine the level of impairment severity," in the introductory text to the current listings.

Other Proposed Changes

Throughout these proposed rules, we make nonsubstantive editorial changes to update medical terminology in the introductory text and the listings and to make their structure and language simpler and clearer. We also designate all paragraphs in the proposed rules with letters or numbers to make it easier to refer to them, and provide headings for all of the major sections and many of the subsections.

We also propose to make a number of conforming changes in other body systems that would reflect the changes in the proposed mental disorders listings, specifically, the respiratory system for adults (3.00), multiple body systems for adults and children (10.00 and 110.00), neurological for adults (11.00), and immune disorders for children (114.00) [50] In addition, we propose to add a new section 111.00F to provide our policy for evaluating traumatic brain injury (TBI) in the childhood listings. The information is essentially the same as in current 11.00F.

Each of the current listings in 114.00—the immune disorders system for children—includes criteria that cross-refer to the functional criteria in current listings 112.02 and 112.12. We are proposing to remove these listing criteria without replacement. According to our data, we almost never use them, and in some cases, we have never used them. For example, from fiscal year (FY) 2003 through FY 2007, only two children were allowed under the functional listing for human immunodeficiency virus (HIV) infection at the initial level of adjudication. We added functional criteria to all of the other child immune system listings beginning in June 2008, but in FY 2009, only 13 children qualified at the initial level under those new listings.[51]

Under the current 114.00 listings, we use the functional criteria in the childhood mental disorders listings to evaluate both physical and mental limitations that result from immune system disorders. We believe that, because of the nature of the changes we are proposing in these mental disorders listings, it would no longer be appropriate to incorporate the criteria in the childhood mental disorders listings by reference if we publish the proposed rules as final rules. Moreover, children with claims for SSI can qualify under our rules for functional equivalence to the listings, which consider their functional limitations in domains that we designed to cover all childhood physical and mental functioning. The very small number of children who qualify under the functional criteria in the immune disorders listings would still be able to qualify under our functional equivalence criteria.

We are not proposing a similar change to the adult listings for immune disorders in 14.00. Each of those listings also contains criteria for evaluating functioning, but we do not cross-refer to the adult mental disorders listings; rather, we include specific functional criteria within each of the adult listings. Also, we do not have functional equivalence rules for adults.

Finally, we propose to update a provision in § 416.934. Section 416.934 provides a list of impairment categories that employees in our field offices may use to make findings of presumptive disability in SSI claims without obtaining any medical evidence.[52] Section 416.934(h) applies to claimants who are at least 7 years old. It uses the outdated term "mental deficiency." It also refers to allegations that a child "is unable to attend any type of school."

We propose to revise § 416.934(h) to:

- Reduce the lower age limit from age 7 to age 4,
- Refer to ID/MR and other cognitive impairments, and
- Remove the statement about inability to attend school and replace it with a new requirement.

The proposed new requirement is an allegation of a complete inability to independently perform basic self-care activities (such as toileting, eating, dressing, or bathing) made by another person who files on behalf of the claimant. We based the proposed criterion on proposed listings 12.05A and 112.05A, but it is somewhat different than the listing criterion, which does not necessarily require a "complete" inability to perform basic self-care activities. We proposed this

[50] Some of these changes would remove reference listings (or portions of reference listings) that cross-refer to the mental disorders listings. Reference listings are listings that are met by satisfying the criteria of other listings. The reference listings for mental disorders are redundant because we evaluate mental effects of impairments using the listings in 12.00 and 112.00. We have been removing reference listings from all of the body systems as we revise them, and the changes we are proposing in this NPRM are consistent with that approach. Examples of recent such changes include the "Revised Medical Criteria for Evaluating Digestive Disorders," 72 FR 59398 (October 19, 2007), and the "Revised Medical Criteria for Evaluating Immune System Disorders," 73 FR 14570 (March 18, 2008).

[51] We published the functional criteria for the other listings in the immune body system in March 2008, and the rules became effective June 16, 2008. 73 FR 14570. From June 16, 2008, through September 30, 2009, we found that only 21 children qualified under the immune listings containing functional criteria, including the HIV listing.

[52] We may make SSI payments based on presumptive disability or presumptive blindness when there is a high degree of probability that we will find a claimant disabled or blind when we make our formal disability determination at the initial level of our administrative review process. 20 CFR 416.931.

criterion because the regulation section has a very narrow and specific purpose: to allow employees in our field offices, who do not make disability determinations and will not be reviewing medical evidence for these cases, to authorize presumptive disability payments while the State agency is determining whether the claimant is disabled.

We propose to reduce the lower age limit to age 4 because we believe that age 7 is too high, and age 4 is the lowest age at which we can confidently permit our field office employees to accept the allegation in the proposed rule.

These proposed rule changes apply only to our field office employees. State agencies will still be able to authorize presumptive disability payments, in appropriate cases, for children under age 4 and for children and adults who do not have a complete inability to perform basic self-care activities. Under § 416.933 of our regulations, which we are not proposing to change, State agencies may authorize presumptive disability payments whenever they determine that the evidence they already have reflects a high degree of probability that a person is disabled.

What other projects are we doing to determine the requirements of work?

These proposed rules include criteria that refer to the requirements of work. We are also conducting two long-term projects that we expect will help us to better determine the requirements of work. While the outcome of these projects may affect rules that we may propose in the future, we believe that these long-term projects do not affect our decision to proceed with these proposed rules now. We would welcome your comments regarding the proposed regulatory changes to the listing of mental impairments in light of the projects we have underway.

- We are working to develop an occupational information system (OIS), tailored to our disability programs, which will replace our use of the *Dictionary of Occupational Titles.* The goal of the research and development underway for the OIS Development Project is to provide occupational information that our adjudicators can use to evaluate disability claims at steps 4 and 5 of the sequential evaluation process. The OIS Development Project must conduct research regarding the requirements of work in terms of physical and mental-cognitive function that we consider in our residual functional capacity assessments of disability claimants.[53] As the results of the OIS Development Project may inform our criteria regarding the physical and mental-cognitive functioning required to do substantial gainful activity, the research may also inform related criteria for gainful work articulated in our Listing of Impairments.
- Our evaluation of disability often involves both medical and functional criteria. The Clinical Research Center at the National Institutes of Health has been involved in extensive research concerning the impact of functional limitations on rehabilitation outcomes. Currently, we have an interagency agreement with the Clinical Research Center to explore the possibility of using International Classification of Functioning domains in predicting disability. Modern concepts of disability emphasize the gap between personal abilities and environmental demands. Therefore, it is crucial to characterize a claimant's functional abilities, work-related requirements, as well as key aspects of his or her workplace, home, and community environments in order to assess the potential for substantial gainful activity more comprehensively.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

Under the Act, we have full power and authority to make rules and regulations, and to establish necessary and appropriate procedures to carry out such provisions. Sections 205(a), 702(a)(5), and 1631(d)(1).

How long would these proposed rules be effective?

If we publish these proposed rules as final rules, they will remain in effect for 5 years after the date they become effective, unless we extend them or revise and issue them again.

Clarity of These Proposed Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rules.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We believe these proposed rules are not economically significant within the meaning of Executive Order 12866; however, we invite public comment on the cost impact of the rules.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These rules do not create any new, or affect any existing, collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

[53] To provide independent advice and recommendations on these plans and activities, we convened a discretionary advisory committee, the Occupational Information Development Advisory Panel (Panel), which was established under the Federal Advisory Committee Act of 1972, as amended. This Panel began meeting in February 2009 and delivered its first report in September 2009. Among other recommendations, this report recommends that we adopt specific domains of mental-cognitive functioning that are critical to the evaluation of a claim for disability benefits. These domains are different than those contained in this proposed rule. The Panel's report, in its entirety, can be accessed at *http://www.ssa.gov/oidap/index.htm;* the recommended mental-cognitive domains and data elements are located on pages 41 and 42 of this report.

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These references are included in the rulemaking record for these proposed rules and are available for inspection by interested persons by making arrangements with the contact person shown in this preamble.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts J, P, and Q of part 404 and subparts I, J, and N of part 416 of

chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.941 by revising paragraphs (b)(3) and (b)(4), and adding paragraph (b)(5) to read as follows:

§ 404.941 Prehearing case review.

* * * * *

(b) * * *

(3) There is a change in the law or regulation;

(4) There is an error in the file or some other indication that the prior determination may be revised; or

(5) An administrative law judge requires the services of a medical expert to assist in reviewing a mental disorder(s), but such services are unavailable.

* * * * *

Subpart P—[Amended]

3. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a)–(b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189, sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

4. Amend § 404.1503 by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2), to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

* * * * *

(e) * * *

(2) *Overall responsibility for evaluating mental impairments.* (i) In any case at the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing the medical severity of your mental impairment(s). The State agency disability examiner may assist in reviewing the claim and preparing documents that contain the medical portion of the case review and any applicable residual functional capacity assessment. However, our medical or psychological consultant must review and sign any document(s) that includes the medical portion of the case review and any applicable residual functional capacity assessment to attest that these documents are complete and that he or she is responsible for the content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the disability hearing officer has overall responsibility for assessing the medical severity of your mental impairment(s). The determination must document the disability hearing officer's pertinent findings and conclusions regarding the mental impairment(s).

(ii) At the administrative law judge hearing and Appeals Council levels, the administrative law judge or, if the Appeals Council makes a decision, the Appeals Council has overall responsibility for assessing the medical severity of your mental impairment(s). The written decision must incorporate the pertinent findings and conclusions of the administrative law judge or Appeals Council.

§ 404.1520a [Removed]

5. Remove § 404.1520a.

6. Amend appendix 1 to subpart P of part 404 as follows:

a. Revise item 13 of the introductory text before part A.

b. Revise the last sentence of section 3.00H of part A.

c. Revise listing 3.10 of part A.

d. Revise the fourth sentence of section 10.00A2 of part A.

e. Revise the third sentence in the first undesignated paragraph of section 11.00E of part A.

f. Add a new undesignated sixth paragraph to section 11.00E of part A.

g. Revise the introductory paragraph of section 11.00F of part A of appendix 1.

h. Revise 11.09 of part A.

i. Revise 11.17 of part A.

j. Revise 11.18 of part A.

k. Revise section 12.00 of part A.

l. Revise the fourth sentence of section 110.00A2 of part B.

m. Add section 111.00F to part B.

n. Revise section 112.00 of part B.

o. Revise the first sentence of section 114.00D6e(ii), remove section 114.00I, and redesignate section 114.00J as section 114.00I in part B.

p. Revise 114.02 and 114.03 of part B.

q. Remove the semicolon and the word "or" after section 114.04C2, add a period after section 114.04C2, and remove section 114.04D of part B.

r. Remove the word "or" after section 114.05D and remove section 114.05E of part B.

s. Revise 114.06 of part B.

t. Remove the word "or" after section 114.07B and remove section 114.07C of part B.

u. Remove the word "or" after section 114.08K and remove section 114.08L of part B.

v. Remove the word "or" after section 114.09C and remove section 114.09D of part B.

w. Revise 114.10 of part B.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

13. Mental Disorders (12.00 and 112.00): (Insert date 5 years from the effective date of the final rules).

* * * * *

Part A

* * * * *

3.00 Respiratory System

* * * * *

H. *Sleep-related breathing disorders.* * * * Mental disorders affecting cognition that result from sleep-related breathing disorders are evaluated under 12.02 (Dementia and amnestic and other cognitive disorders).

* * * * *

3.01 Category of Impairments, Respiratory System

* * * * *

3.10 *Sleep-related breathing disorders.* Evaluate under 3.09 (chronic cor pulmonale) or 12.02 (Dementia and amnestic and other cognitive disorders).

* * * * *

10.00 Impairments That Affect Multiple Body Systems

A. What impairment do we evaluate under this body system?

* * * * *

2. *What is Down syndrome?* * * * Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and intellectual disability/mental retardation (ID/MR). * * *

* * * * *

11.00 Neurological

* * * * *

E. *Multiple sclerosis.* * * * Paragraph B provides references to other listings for evaluating visual disorders caused by multiple sclerosis. * * *

* * * * *

We evaluate mental impairments associated with multiple sclerosis under 12.00.

* * * * *

F. *Traumatic brain injury (TBI).* We evaluate neurological impairments that result from TBI under 11.02, 11.03, or 11.04, as applicable. We evaluate mental impairments that result from TBI under 12.02.

* * * * *

11.09 *Multiple sclerosis.* With:

* * * * *

B. Visual disorder as described under the criteria in 2.02, 2.03, or 2.04; or

* * * * *

11.17 *Degenerative disease not listed elsewhere, such as Huntington's disease, Friedreich's ataxia, and spino-cerebellar degeneration.* With disorganization of motor function as described in 11.04B.

* * * * *

11.18 *Cerebral trauma.* Evaluate under 11.02, 11.03, or 11.04, as applicable.

12.00 Mental Disorders

A. What are the listings, and what do they require?

1. The listings for mental disorders are arranged in 10 categories: Dementia and amnestic and other cognitive disorders (12.02); schizophrenia and other psychotic disorders (12.03); mood disorders (12.04); intellectual disability/mental retardation (ID/MR) (12.05); anxiety disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); autism spectrum disorders (12.10); other disorders usually first diagnosed in childhood or adolescence (12.11); and eating disorders (12.13).

2. Each listing is divided into three paragraphs, designated A, B, and C. Except for 12.05, the listing for ID/MR, your mental disorder must satisfy the requirements of paragraphs A and B or paragraphs A and C in the listing for your mental disorder. See 12.00A3 for the requirements for 12.05.

a. Paragraph A of each listing (except 12.05) requires you to show that you have a medically determinable mental disorder in the listing category. For example, for 12.03A, you must have evidence showing that you have schizophrenia or another medically determinable psychotic disorder. Paragraph A also includes a reference to the corresponding section of 12.00B that describes the listing category; for example, the reference in 12.03A is to 12.00B2, where we provide a general description of schizophrenia and other psychotic disorders and give examples of disorders in the category.

b. (i) Paragraph B of each listing (except 12.05) provides the criteria we use to evaluate the severity of your mental disorder. These criteria are the mental abilities a person uses to function in a work setting, and they apply to all of the listings. To satisfy the paragraph B criteria, your mental disorder must result in "marked" limitations of two or "extreme" limitation of one of the mental abilities in paragraph B (see 12.00C, D, and F).

(ii) When we refer to "paragraph B" or "the paragraph B criteria" in the introductory text of this body system, we mean the criteria in paragraph B of every mental disorders listing except 12.05.

c. (i) Paragraph C provides an alternative to the paragraph B criteria that we can use to evaluate the severity of mental disorders except those under 12.05. To satisfy the paragraph C criteria, you must have a serious and persistent mental disorder under one of those listings that satisfies the criteria in both C1 and C2 (see 12.00E and F).

(ii) When we refer to "paragraph C" or "the paragraph C criteria" in the introductory text of this body system, we mean the criteria in paragraph C of every mental disorders listing except 12.05.

3. To meet 12.05, your ID/MR must satisfy 12.05A, B, or D, or you must have a combination of ID/MR and another "severe" physical or mental impairment that satisfies 12.05C.

B. How do we describe the mental disorders listing categories? In the following sections, we provide a brief description of the mental disorders included in each listing category, followed by examples of symptoms and signs that persons with disorders in each category may have. Except for 12.05, we also provide examples of common mental disorders diagnosed in each category; we do not provide examples for 12.05 because ID/MR is the only disorder covered by that listing. Although the evidence must show that you have a mental disorder in one of the listing categories, your mental disorder does not have to match one of the examples in this section. We will find that any mental disorder meets one of these mental disorders listings when it can be included in one of the listing categories and satisfies the other criteria of the appropriate listing.

1. Dementia and Amnestic and Other Cognitive Disorders (12.02)

a. These disorders are characterized by a clinically significant decline in cognitive functioning.

b. Symptoms and signs may include, but are not limited to, disturbances in memory, executive functioning (that is, higher-level cognitive processes; for example, regulating attention, planning, inhibiting responses, decisionmaking), psychomotor activity, visual-spatial functioning, language and speech, perception, insight, and judgment.

c. Examples of disorders in this category include the following.

(i) Dementia of the Alzheimer's type;

(ii) Vascular dementia;

(iii) Traumatic brain injury, or TBI (see also 11.00F); and

(iv) Dementia and amnestic or other cognitive disorders due to medications, toxins, or a general medical condition, such as human immunodeficiency virus infection, neurological disease (for example, multiple sclerosis, Parkinson's disease, Huntington's disease), or metabolic disease (for example, late-onset Tay-Sachs disease).

d. This category does not include mental disorders that are included in the listing categories for ID/MR (12.05), autism spectrum disorders (12.10), and other disorders usually first diagnosed in childhood or adolescence (12.11).

2. Schizophrenia and Other Psychotic Disorders (12.03)

a. These disorders are characterized by delusions, hallucinations, disorganized speech, or grossly disorganized or catatonic behavior, causing a clinically significant decline in functioning.

b. Symptoms and signs may include, but are not limited to, inability to initiate and persist in goal-directed activities, social withdrawal, flat or inappropriate affect, poverty of thought and speech, loss of interest or pleasure, disturbances of mood, odd beliefs and mannerisms, and paranoia.

c. Examples of disorders in this category include schizophrenia, schizoaffective disorder, delusional disorder, and psychotic disorder due to a general medical condition.

3. Mood Disorders (12.04)

a. These disorders are characterized by an irritable, depressed, elevated, or expansive mood, or by a loss of interest or pleasure in all or almost all activities, causing a clinically significant decline in functioning.

b. Symptoms and signs may include, but are not limited to, feelings of hopelessness or guilt, suicidal ideation, a clinically significant change in body weight or appetite, sleep disturbances, an increase or decrease in energy, psychomotor abnormalities, disturbed concentration, pressured speech, grandiosity, reduced impulse control, rapidly alternating moods, sadness, euphoria, and social withdrawal.

c. Examples of disorders in this category include major depressive disorder, the various types of bipolar disorders, cyclothymic disorder, dysthymic disorder, and mood disorder due to a general medical condition.

4. Intellectual Disability/Mental Retardation (ID/MR) (12.05)

a. This disorder is defined by significantly subaverage general intellectual functioning with significant deficits in adaptive functioning initially manifested before age 22.

b. Signs may include, but are not limited to, poor conceptual, social, and practical skills, and a tendency to be passive, placid, and dependent on others, or to be impulsive or easily frustrated. When we evaluate your adaptive functioning, we also consider the factors in 12.00F.

c. ID/MR is often demonstrated by evidence from the period before age 22. However, when we do not have evidence from that period, we will still find that you have ID/MR if we have evidence about your current functioning and the history of your impairment that is consistent with the diagnosis, and there is no evidence to indicate an onset after age 22.

d. We consider your IQ score to be "valid" when it is supported by the other evidence, including objective clinical findings, other clinical observations, and evidence of your day-to-day functioning that is consistent with the test score. If the IQ test provides more than one IQ score (for example, a verbal, performance, and full scale IQ in a Wechsler series test), we use the lowest score. When we consider your IQ score, we apply the rules in 12.00D4.

e. In 12.05C, the term "severe" has the same meaning as in §§ 404.1520(c) and 416.920(c). Your additional impairment(s) must cause more than a slight or minimal physical or mental functional limitation(s); it must significantly limit your physical or mental ability to do basic work activities, as we explain in those sections of our regulations

and §§ 404.1521 and 416.921. The limitation(s) must be separate from the limitations caused by your ID/MR; for example, limitation in your ability to respond appropriately to supervision and coworkers that result from another mental disorder or in your physical ability to walk, stand, or sit. If your additional impairment(s) is not "severe" as defined in our regulations, your ID/MR will not meet 12.05C even if your additional impairment(s) prevents you from doing your past work because of the unique features of that work.

f. Listing 12.05 is for ID/MR only. We evaluate other mental disorders that primarily affect cognition in the listing categories for dementia and amnestic and other cognitive disorders (12.02), autism spectrum disorders (12.10), or other disorders usually first diagnosed in childhood or adolescence (12.11), as appropriate.

5. Anxiety Disorders (12.06)

a. These disorders are characterized by excessive anxiety, worry, apprehension, and fear, or by avoidance of feelings, thoughts, activities, objects, places, or persons.

b. Symptoms and signs may include, but are not limited to, restlessness, difficulty concentrating, hyper-vigilance, muscle tension, sleep disturbance, fatigue, panic attacks, obsessions and compulsions, constant thoughts and fears about safety, and frequent somatic complaints. Symptoms and signs associated with trauma may include recurrent intrusive recollections of a traumatic event, and acting or feeling as if the traumatic event were recurring.

c. Examples of disorders in this category include panic disorder, phobic disorder, obsessive-compulsive disorder, post-traumatic stress disorder (PTSD), generalized anxiety disorder, and anxiety disorder due to a general medical condition.

6. Somatoform Disorders (12.07)

a. These disorders are characterized by physical symptoms or deficits that are not intentionally produced or feigned, and that, following clinical investigation, cannot be fully explained by a general medical condition, another mental disorder, the direct effects of a substance, or a culturally sanctioned behavior or experience.

b. Symptoms and signs may include, but are not limited to, pain and other abnormalities of sensation, gastrointestinal symptoms, fatigue, abnormal motor movement, pseudoseizures, and pseudoneurological symptoms, such as blindness or deafness.

c. Examples of disorders in this category include somatization disorder, conversion disorder, body dysmorphic disorder, and pain disorder associated with psychological factors.

7. Personality Disorders (12.08)

a. These disorders are characterized by an enduring, inflexible, pervasive, and maladaptive pattern of inner experience and behavior that causes clinically significant distress or impairment in social, occupational, or other important areas of functioning, and that has an onset in adolescence or early adulthood.

b. Symptoms and signs may include, but are not limited to, patterns of distrust, suspiciousness, and odd beliefs; social detachment, discomfort, or avoidance; hypersensitivity to negative evaluation; an excessive need to be taken care of; difficulty making independent decisions; a preoccupation with orderliness, perfectionism, and control; grandiosity; inappropriate and intense anger; self-mutilating behaviors; and recurrent suicidal threats, gestures, or attempts.

c. Examples of disorders in this category include paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, dependent personality disorder, borderline personality disorder, and obsessive-compulsive personality disorder.

8. Autism Spectrum Disorders (12.10)

a. These disorders are characterized by qualitative deficits in the development of reciprocal social interaction, verbal and nonverbal communication skills, and symbolic or imaginative activity; restricted repetitive and stereotyped patterns of behavior, interests, and activities; and a history of early stagnation of skill acquisition or loss of previously acquired skills.

b. Symptoms and signs may include, but are not limited to, abnormalities and unevenness in the development of cognitive skills; unusual responses to sensory stimuli; and behavioral difficulties, including hyperactivity, short attention span, impulsivity, aggressiveness, or self-injurious actions.

c. Examples of disorders in this category include autistic disorder, Asperger's disorder, and pervasive developmental disorder (PDD).

d. This category does not include mental disorders that are included in the listing categories for dementia and amnestic and other cognitive disorders (12.02), ID/MR (12.05), and other disorders usually first diagnosed in childhood or adolescence (12.11).

9. Other Disorders Usually First Diagnosed in Childhood or Adolescence (12.11)

a. These disorders are characterized by onset during childhood or adolescence, although sometimes they are not diagnosed until adulthood.

b. Symptoms and signs may include, but are not limited to, underlying abnormalities in cognitive processing (for example, deficits in learning and applying verbal or nonverbal information, visual perception, memory, or a combination of these), deficits in attention or impulse control, low frustration tolerance, excessive or poorly planned motor activity, difficulty with organizing (time, space, materials, or tasks), repeated accidental injury, and deficits in social skills. Symptoms and signs specific to tic disorders include sudden, rapid, recurrent, non-rhythmic, stereotyped motor movement or vocalization; mood lability; and obsessions and compulsions.

c. Examples of disorders in this category include learning disorders, attention-deficit/hyperactivity disorder, and tic disorders, such as Tourette syndrome, chronic motor or vocal tic disorder, and transient tic disorder.

d. This category does not include mental disorders that are included in the listing categories for dementia and amnestic and other cognitive disorders (12.02), ID/MR (12.05), and autism spectrum disorders (12.10).

10. Eating Disorders (12.13)

a. These disorders are characterized by disturbances in eating behavior and preoccupation with, and excessive self-evaluation of, body weight and shape.

b. Symptoms and signs may include, but are not limited to, refusal to maintain a minimally normal weight or a minimally normal body mass index (BMI); recurrent episodes of binge eating and behavior intended to prevent weight gain, such as self-induced vomiting, excessive exercise, or misuse of laxatives; mood disturbances, social withdrawal, or irritability; amenorrhea; dental problems; abnormal laboratory findings; and cardiac abnormalities.

c. Examples of disorders in this category include anorexia nervosa and bulimia nervosa.

C. What are the paragraph B criteria? The paragraph B criteria are the mental abilities a person uses to function in a work setting. They are the abilities to: Understand, remember, and apply information (paragraph B1); interact with others (paragraph B2); concentrate, persist, and maintain pace (paragraph B3); and manage oneself (paragraph B4). In this section, we provide basic definitions of the four paragraph B mental abilities and some examples of how a person may use these mental abilities to function in a work setting. In 12.00D, we explain how we rate the severity of limitations in the paragraph B mental abilities under these listings.

1. *Understand, remember, and apply information (paragraph B1).* This is the ability to acquire, retain, integrate, access, and use information to perform work activities. You use this mental ability when, for example, you follow instructions, provide explanations, and identify and solve problems.

2. *Interact with others (paragraph B2).* This is the ability to relate to and work with supervisors, co-workers, and the public. You use this mental ability when, for example, you cooperate, handle conflicts, and respond to requests, suggestions, and criticism.

3. *Concentrate, persist, and maintain pace (paragraph B3).* This is the ability to focus attention on work activities and to stay on task at a sustained rate. You use this mental ability when, for example, you concentrate, avoid distractions, initiate and complete activities, perform tasks at an appropriate and consistent speed, and sustain an ordinary routine.

4. *Manage oneself (paragraph B4).* This is the ability to regulate your emotions, control your behavior, and maintain your well-being in a work setting. You use this mental ability when, for example, you cope with your frustration and stress, respond to demands and changes in your environment, protect yourself from harm and exploitation by others, inhibit inappropriate actions, take your medications, and maintain your physical health, hygiene, and grooming.

D. How do we use the paragraph B mental abilities to evaluate your mental disorder?

1. General

a. When we rate your limitations using the paragraph B mental abilities, we consider only limitations you have because of your mental disorder.

b. To do most kinds of work, a person is expected to use his or her mental abilities independently, appropriately, effectively, *and* on a sustained basis.

c. Marked or extreme limitation of a paragraph B mental ability reflects the overall degree to which your mental disorder interferes with your using that ability independently, appropriately, effectively, *and* on a sustained basis in a work setting. It does not necessarily reflect a specific type or number of activities, including activities of daily living, that you have difficulty doing. In addition, no single piece of information (including test scores) can establish whether you have marked or extreme limitation of a paragraph B mental ability. (*See* 12.00D4.)

d. Marked or extreme limitation of a paragraph B mental ability also reflects the kind and extent of supports you receive and the characteristics of any highly structured setting in which you spend your time that enable you to function as you do. The more extensive the supports or the more structured the setting you need to function, the more limited we will find you to be. (*See* 12.00F.)

2. What We Mean by "Marked" Limitation

a. *Marked limitation* of a paragraph B mental ability means that the symptoms and signs of your mental disorder interfere *seriously* with your using that mental ability independently, appropriately, effectively, *and* on a sustained basis to function in a work setting. Although we do not require the use of such a scale, marked would be the fourth point on a five-point rating scale consisting of no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation.

b. Although we do not require standardized test scores to determine whether you have marked limitations, we will generally find that you have marked limitation of a paragraph B mental ability when you have a valid score that is at least two, but less than three, standard deviations below the mean on an individually administered standardized test designed to measure that ability and the evidence shows that your functioning over time is consistent with the score. (*See* also 12.00D4.)

c. Marked limitation is also the equivalent of the level of limitation we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean.

3. What We Mean by "Extreme" Limitation

a. *Extreme limitation* of a paragraph B mental ability means that the symptoms and signs of your mental disorder interfere *very seriously* with your using that mental ability independently, appropriately, effectively, *and* on a sustained basis to function in a work setting. Although we do not require the use of such a scale, extreme would be the last point on a five-point rating scale consisting of no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation.

b. Although we do not require standardized test scores to determine whether you have extreme limitations, we will generally find that you have extreme limitation of a paragraph B mental ability when you have a valid score that is at least three standard deviations below the mean on an individually administered standardized test designed to measure that ability and the evidence shows that your functioning over time is consistent with the score. (*See* also 12.00D4.)

c. "Extreme" is the rating we give to the worst limitations; however, it does not necessarily mean a total lack or loss of ability to function. It is the equivalent of the level of limitation we would expect to find on standardized testing with scores that are at least three standard deviations below the mean.

4. How We Consider Your Test Results

a. We do not rely on any IQ score or other test result alone. We consider your test scores together with the other information we have about how you use the mental abilities described in the paragraph B criteria in your day-to-day functioning.

b. We may find that you have "marked" or "extreme" limitation when you have a test score that is slightly higher than the levels we provide in 12.00D2 and D3 if other information in your case record shows that your functioning in day-to-day activities is seriously or very seriously limited. We will not find that you have "marked" or "extreme" limitation in your ability to understand, remember, and apply information (or in any other ability measured by a standardized test) unless you have evidence demonstrating that your functioning is consistent with such a limitation.

c. Generally, we will not find that a test result is valid for our purposes when the information we have about your functioning is of the kind typically used by medical professionals to determine that the test results are not the best measure of your day-to-day functioning. If there is a material inconsistency between your test results and other information in your case record, we will try to resolve it. We use the following guidelines when we consider your test scores:

(i) The interpretation of the test is primarily the responsibility of the professional who administered the test. The narrative report that accompanies the test results should specify whether the results are deemed to be valid; that is, whether they are consistent with your medical and developmental history and information about your day-to-day functioning.

(ii) It is our responsibility to ensure that the evidence in your case record is complete and to resolve any material inconsistencies in the evidence. In some cases, we will be able to resolve an inconsistency with the information already in your case record. In others, we may need to request additional information; for example, by recontacting your medical source(s), by purchasing a consultative examination, or by questioning persons who are familiar with your day-to-day functioning.

E. What are the paragraph C criteria, and how do we use them to evaluate your mental disorder?

1. *General.* We use the paragraph C criteria as an alternative to paragraph B to evaluate "serious and persistent mental disorders" under every mental disorders listing except 12.05. We can use the paragraph C criteria without first considering whether your mental disorder satisfies the paragraph B criteria.

2. *Paragraph C criteria.*

a. To meet the paragraph C criteria, you must have a medically documented history, over a period of at least 1 year, of the existence of a serious and persistent mental disorder. Your mental disorder must also satisfy the criteria in C1 and C2.

b. *The criterion in C1* is satisfied when the evidence shows that continuing treatment, psychosocial support(s), or a highly structured setting(s) diminishes the symptoms and signs of your mental disorder. (*See* 12.00F.)

c. *The criterion in C2* is satisfied when the evidence shows that you have achieved only marginal adjustment despite your diminished symptoms and signs. "Marginal adjustment" means that your adaptation to the requirements of daily living and your environment is fragile; that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life. Changes or increased demands would likely lead to an exacerbation of your symptoms and signs and to deterioration in your functioning; for example, you would be unable to function outside a highly structured setting or outside your home. Similarly, because of the nature of your mental disorder, you could experience episodes of deterioration that require you to be hospitalized or absent from work, making it difficult for you to sustain work activity over time.

F. How do we consider psychosocial supports, highly structured settings, and treatment when we evaluate your functioning?

1. *Psychosocial supports and highly structured settings* may help you to function by reducing the demands made on you. However, your ability to function in settings (including your own home) that are less demanding, more structured, or more supportive than those in which persons typically work does not necessarily show how you would function in a work setting under the stresses of a normal workday and workweek on a sustained basis. Therefore, we will consider the kind and extent of supports you receive and the characteristics of any structured setting in which you spend your time when we evaluate the effect of your mental disorder on your functioning and rate the limitation of your mental abilities (*see* 12.00D).

2. *Examples of psychosocial supports and highly structured settings.*

a. You need family members or other persons to monitor your daily activities and to help you function; for example, you need family members to remind you to eat, to shop for you and pay your bills, to administer your medications, or to change their work hours so you are never home alone.

b. You participate in a special education program that teaches you daily living and vocational skills (*see* 12.00G4).

c. You participate in a psychosocial rehabilitation program, such as a day treatment or clubhouse program, in which you receive training in entry-level work skills (*see* 12.00G4).

d. You participate in a sheltered, supported, or transitional work program, or in a competitive employment setting with the help of a job coach or an accommodating supervisor (*see* 12.00G4).

e. You receive treatment in a day program at a hospital, community treatment program, or other daily outpatient program.

f. You live in a group home, halfway house, or semi-independent living program with a counselor or resident supervisor who is there 24 hours a day.

g. You live in a hospital or other institution with 24-hour care.

h. You live alone and do not receive any psychosocial support(s); however, you have created a highly structured environment by eliminating all but minimally necessary contact with the world outside your living space.

3. *Treatment.*

a. With treatment, such as medications and psychotherapy, you may not only have your symptoms and signs reduced, but may be able to function well enough to work.

b. Treatment may not resolve all of the functional limitations that result from your mental disorder, and the medications you take or other treatment you receive for your disorder may cause side effects that affect your mental or physical functioning; for example, you may experience drowsiness, blunted affect, or abnormal involuntary movements.

c. We will consider the effect of any treatment on your functioning when we evaluate your mental disorder under these listings.

G. What evidence do we need to evaluate your mental disorder?

1. *General.* We need evidence to assess the existence and severity of your mental disorder and its effects on your ability to function in a work setting. Although we always need evidence from an acceptable medical source, the individual facts of your case will determine the extent of that evidence and what evidence, if any, we need from other sources. For our basic rules on evidence, *see* §§ 404.1512, 404.1513, 416.912, and 416.913. For our rules on evidence about a person's symptoms, *see* §§ 404.1529 and 416.929.

2. *Evidence from medical sources.* We will consider all relevant medical evidence about your mental disorder from your physician, psychologist, and other medical sources. Other medical sources include health care providers, such as physician assistants, nurses, licensed clinical social workers, and therapists. These other medical sources can be very helpful in providing evidence to assess the severity of your mental disorder and the resulting limitation in functioning, especially if they see you regularly. Evidence from medical sources may include:

a. Your reported symptoms.

b. Your medical, psychiatric, and psychological history.

c. The results of physical or mental status examinations or other clinical findings.

d. Psychological testing, imaging studies, or other laboratory findings.

e. Your diagnosis.

f. The type, dosage, frequency, duration, and beneficial effects of medications you receive.

g. The type, frequency, duration, and beneficial effects of therapy or counseling you receive.

h. Any side effects of medication or other treatment that limit your ability to function (*see* 12.00F).

i. Your clinical course, including changes in your medication, therapy, or counseling and the time required for therapeutic effectiveness.

j. Observations and descriptions of how you function.

k. Any psychosocial support(s) you receive or highly structured setting(s) in which you are involved (*see* 12.00F).

l. Any sensory, motor, or speaking abnormalities or information about your cultural background (for example, language differences, customs) that may affect an evaluation of your mental disorder.

m. The expected duration of your symptoms and signs and their effects on your ability to function in a work setting over time.

3. *Evidence from you and persons who know you.* We will ask you to describe your symptoms and your limitations if you are able to do so, and we will use that information to help us determine whether you are disabled. We will also consider information from persons who can describe how you usually function from day to day when we need it to show the severity of your mental disorder and how it affects your ability to function. This information may include, but is not limited to, information from your family, other caregivers, friends, neighbors, or clergy. We will consider your statements and the statements of other persons to determine if they are consistent with the medical and other evidence we have.

4. *Evidence from school, vocational training, work, and work-related programs.*

a. If you have recently attended or are still attending school and have received or are receiving special education services, we will consider information from your school sources when we need it to show the severity of your mental disorder and how it affects your ability to function. This information may include, but is not limited to, Individualized Education Programs (IEPs), education records, therapy progress notes, and information from your teachers about how you function in their classrooms and about any special services or accommodations you receive at school.

b. If you recently attended or are still attending vocational training classes or if you have attempted to work or are working now, we will consider information from your training program or employer when we need it to show the severity of your mental disorder and how it affects your ability to function. This information may include, but is not limited to, training or work evaluations, modifications to your work duties or work schedule, and any special supports or accommodations you have required or now require in order to work. If you have worked or are working through a community mental health program, a sheltered work program, a supported work program, a rehabilitation program, or a transitional employment program, we will consider the type and degree of support you have received or are receiving in order to work.

5. *Evidence from psychological and psychiatric measures.* We will consider the results from psychological and psychiatric measures together with all the other evidence in your case record. Results from these measures are only part of the evidence we use in our overall disability evaluation; we will not use these results alone to decide whether you are disabled. (*See* 12.00D4.)

6. *Need for longitudinal evidence.*

a. Many persons with mental disorders experience periods of worsening of the symptoms and signs of their mental disorders (exacerbations) and periods of improvement of their symptoms and signs (remissions). Exacerbations may make it difficult for you to sustain employment. Therefore, we generally will consider how you function longitudinally; that is, over time. We will not find that you are able to work solely because you have a period(s) of remission, or that you are disabled solely because you have an exacerbation(s) of your mental disorder. We will consider how often you have remissions and exacerbations and how long they last, what causes your mental disorder to improve or worsen, and any other information that is relevant to our determination about how you function over time. We will consider longitudinal evidence from relevant sources over a sufficient period to establish the severity of your mental disorder over time.

b. If you have a serious mental disorder, you will probably have evidence of its effects on your functioning over time, even if you do not have an ongoing relationship with the medical community. For example, family members, friends, adult day-care providers, teachers, neighbors, former employers, social workers, peer specialists, mental health clinics, emergency shelters, law enforcement, or government agencies may be familiar with your mental health history.

c. You may function differently and appear more or less limited in an unfamiliar or one-time situation, such as a consultative examination, than is indicated by other information about your functioning over time. Your ability to function during a time-limited mental status examination or psychological testing, or in another unfamiliar or one-time situation, does not necessarily show how you will be able to function in a work setting under the stresses of a normal workday and workweek on a sustained basis.

d. Working involves many factors and demands that can be stressful to persons with mental disorders; for example, the specific work activities involved, the physical work environment, the work schedule or routine, and the social interactions and relationships in the workplace. Stress may be caused, for example, by the demands of getting to work regularly, having your performance

supervised, or remaining in the workplace for a full day.

(i) Your reaction to stress associated with the demands of work may be different from another person's; that is, the symptoms and signs of your mental disorder may be more or less affected by stress than those of another person with the same mental disorder or another mental disorder.

(ii) We will consider evidence from all sources about the effects of stress on your mental abilities, including any evidence pertinent to the effects of work-related stress. We will also take into consideration what, if any, psychosocial support(s) or structure you would need when you experience work-related stress (*see* 12.00F).

H. How do we evaluate substance use disorders?

If we find that you are disabled and there is medical evidence in your case record establishing that you have a substance use disorder, we will determine whether your substance use disorder is a contributing factor material to the determination of disability. (*See* §§ 404.1535 and 416.935.)

I. How do we evaluate mental disorders that do not meet one of the mental disorders listings?

1. These listings include only examples of mental disorders that we consider severe enough to prevent you from doing any gainful activity. If your severe mental disorder does not meet the criteria of any of these listings, we will also consider whether you have an impairment(s) that meets the criteria of a listing in another body system. You may have a separate other impairment(s) or a physical impairment(s) that is secondary to your mental disorder. For example, if you have an eating disorder and develop a cardiovascular impairment because of it, we will evaluate your cardiovascular impairment under the listings for the cardiovascular body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (*See* §§ 404.1526 and 416.926.)

3. If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. (*See* §§ 404.1545 and 416.945.) In that situation, we proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. When we assess your residual functional capacity, we consider all of your physical and mental limitations. If you have limitations in your ability to perform work-related physical activities that are secondary to your mental disorder, we will consider them when we assess your residual functional capacity. For example, limitations in walking or standing due to the side effects of medication you take to treat your mental disorder may affect your residual functional capacity for work requiring physical exertion. When we decide whether you continue to be disabled, we use the rules in §§ 404.1594 and 416.994.

12.01 Category of Impairments, Mental Disorders

12.02 *Dementia and Amnestic and Other Cognitive Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B1).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.03 *Schizophrenia and Other Psychotic Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B2).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.04 *Mood Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B3).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.05 *Intellectual Disability/Mental Retardation (ID/MR)* satisfying A, B, C, or D.

A. ID/MR as defined in 12.00B4, with mental incapacity evidenced by dependence upon others for personal needs (for example, toileting, eating, dressing, or bathing) and an inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded.

OR

B. ID/MR as defined in 12.00B4, with a valid IQ score of 59 or less (as defined in 12.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 12.00D4).

OR

C. ID/MR as defined in 12.00B4, with a valid IQ score of 60 through 70 (as defined in 12.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 12.00D4) and with another "severe" physical or mental impairment (*see* 12.00B4e).

OR

D. ID/MR as defined in 12.00B4, with a valid IQ score of 60 through 70 (as defined in 12.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 12.00D4), resulting in *marked* limitation of at least two of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

12.06 *Anxiety Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B5).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.07 *Somatoform Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B6).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.08 *Personality Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B7).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.10 *Autism Spectrum Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B8).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (see 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.11 *Other Disorders Usually First Diagnosed in Childhood or Adolescence,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B9).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

12.13 *Eating Disorders,* with both A and B or both A and C.

A. A medically determinable mental disorder in this category (*see* 12.00B10).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 12.00C1).

2. Ability to interact with others (*see* 12.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 12.00C3).

4. Ability to manage oneself (*see* 12.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 12.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 12.00E2c.

* * * * *

Part B

* * * * *

110.00 Impairments That Affect Multiple Body Systems

A. What kinds of impairments do we evaluate under this body system?

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2. *What is Down syndrome?* * * * Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and intellectual disability/mental retardation (ID/MR). * * *

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111.00 Neurological

* * * * *

F. *Traumatic brain injury (TBI).*

1. We evaluate neurological impairments that result from TBI under 111.02, 111.03, 111.06, and 111.09, as applicable. We evaluate mental impairments that result from TBI under 112.02.

2. TBI may result in neurological and mental impairments with a wide variety of posttraumatic symptoms and signs. The rate and extent of recovery can be highly variable and the long-term outcome may be difficult to predict in the first few months post-injury. Generally, the neurological impairment(s) will stabilize more rapidly than any mental impairment. Sometimes, a mental impairment may appear to improve immediately following TBI and then worsen, or, conversely, may appear much worse initially but improve after a few months. Therefore, the mental findings immediately following TBI may not reflect the actual severity of your mental impairment(s). The actual severity of a mental impairment may not become apparent until 6 months post-injury.

3. In some cases, evidence of a profound neurological impairment is sufficient to permit a finding of disability within 3 months post-injury. If a finding of disability within 3 months post-injury is not possible based on any neurological impairment(s), we will defer adjudication of the claim until we obtain evidence of your neurological or mental impairments at least 3 months post-injury. If a finding of disability still is not possible at that time, we will again defer adjudication of the claim until we obtain evidence at least 6 months post-injury. At that time, we will fully evaluate any neurological and mental impairments and adjudicate the claim.

* * * * *

112.00 Mental Disorders

A. *What are the mental disorders listings for children age 3 to the attainment of age 18, and what do they require?* (*See* 112.00I for the rules on developmental disorders in children from birth to age 3.)

1. The listings for mental disorders are arranged in 10 categories: Dementia and amnestic and other cognitive disorders (112.02); schizophrenia and other psychotic disorders (112.03); mood disorders (112.04); intellectual disability/mental retardation (ID/MR) (112.05); anxiety disorders (112.06); somatoform disorders (112.07); personality disorders (112.08); autism spectrum disorders (112.10); other disorders usually first diagnosed in childhood or adolescence (112.11); and eating disorders (112.13).

2. Each listing is divided into three paragraphs, designated A, B, and C. Except for 112.05, the listing for ID/MR, your mental disorder must satisfy the requirements of paragraphs A and B or paragraphs A and C in the listing for your mental disorder. See 112.00A3 for the requirements for 112.05.

a. Paragraph A of each listing (except 112.05) requires you to show that you have a medically determinable mental disorder in the listing category. For example, for 112.06A, you must have evidence showing that you have an anxiety disorder, such as obsessive-compulsive disorder or generalized anxiety disorder. Paragraph A also includes a reference to the corresponding section of 112.00B that describes the listing category; for example, the reference in 112.06A is to 112.00B5, where we provide a general description of anxiety disorders and give examples of disorders in the category.

b. (i) Paragraph B of each listing (except 112.05) provides the criteria we use to evaluate the severity of your mental disorder. These criteria are the mental abilities a child uses to do age-appropriate activities, and they apply to all of the listings. To satisfy the paragraph B criteria, your mental disorder must result in "marked" limitations of two or "extreme" limitation of one of the mental abilities in paragraph B (*see* 112.00C, D, and F).

(ii) When we refer to "paragraph B" or "the paragraph B criteria" in the introductory text of this body system, we mean the criteria in paragraph B of every mental disorders listing except 112.05.

c. (i) Paragraph C provides an alternative to the paragraph B criteria that we can use to evaluate the severity of mental disorders except those under 112.05. To satisfy the paragraph C criteria, you must have a serious and persistent mental disorder under one of those listings that satisfies the criteria in both C1 and C2 (*see* 112.00E and F).

(ii) When we refer to "paragraph C" or "the paragraph C criteria" in the introductory text of this body system, we mean the criteria in paragraph C of every mental disorders listing except 112.05.

3. To meet 112.05, your ID/MR must satisfy 112.05A, B, or D, or you must have a combination of ID/MR and another "severe" physical or mental impairment that satisfies 112.05C.

B. *How do we describe the mental disorders listing categories for children age 3 to the attainment of age 18?* In the following sections, we provide a brief description of the mental disorders included in each listing category, followed by examples of symptoms and signs that children with disorders in each category may have. Except for 112.05, we also provide examples of mental disorders diagnosed in each category; we do not provide examples for 112.05 because ID/MR is the only disorder covered by that listing. Although the evidence must show that you have a mental disorder in one of the listing categories, your mental disorder does not have to match one of the examples in this section. We will find that any mental disorder meets one of these mental disorders listings when it can be included in one of the listing categories and satisfies the other criteria of the appropriate listing.

1. Dementia and Amnestic and Other Cognitive Disorders (112.02)

a. These disorders are characterized by a clinically significant decline in cognitive functioning.

b. Symptoms and signs may include, but are not limited to, disturbances in memory, executive functioning (that is, higher-level cognitive processes; for example, regulating attention, planning, inhibiting responses, decisionmaking), psychomotor activity, visual-spatial functioning, language and speech, perception, insight, and judgment.

c. Examples of disorders in this category include dementia and amnestic or other cognitive disorders due to medications, toxins, or a general medical condition, such as human immunodeficiency virus infection, neurological disease (for example, multiple sclerosis), or metabolic disease (for example, lysosomal storage disease, late-onset Tay-Sachs disease); and traumatic brain injury, or TBI (*see also* 111.00F).

d. This category does not include mental disorders that are included in the listing categories for ID/MR (112.05), autism spectrum disorders (112.10), and other disorders usually first diagnosed in childhood or adolescence (112.11).

2. Schizophrenia and Other Psychotic Disorders (112.03)

a. These disorders are characterized by delusions, hallucinations, disorganized speech, or grossly disorganized or catatonic behavior, causing a clinically significant decline in functioning.

b. Symptoms and signs may include, but are not limited to, inability to initiate and persist in goal-directed activities, social withdrawal, flat or inappropriate affect, poverty of thought and speech, loss of interest or pleasure, disturbances of mood, odd beliefs and mannerisms, and paranoia.

c. Examples of disorders in this category include schizophrenia, schizoaffective disorder, delusional disorder, and psychotic disorder due to a general medical condition.

3. Mood Disorders (112.04)

a. These disorders are characterized by an irritable, depressed, elevated, or expansive mood, or by a loss of interest or pleasure in all or almost all activities, causing a clinically significant decline in functioning.

b. Symptoms and signs may include, but are not limited to, feelings of hopelessness or guilt, suicidal ideation, a clinically significant change in body weight or appetite, sleep disturbances, an increase or decrease in energy, psychomotor abnormalities, disturbed concentration, pressured speech, grandiosity, reduced impulse control, rapidly alternating moods, sadness, euphoria, and social withdrawal. Depending on a child's age and developmental stage, certain features, such as somatic complaints, irritability, anger, aggression, and social withdrawal may be more commonly present than others.

c. Examples of disorders in this category include major depressive disorder, the various types of bipolar disorders, cyclothymic disorder, dysthymic disorder, and mood disorder due to a general medical condition.

4. Intellectual Disability/Mental Retardation (ID/MR) (112.05)

a. This disorder is defined by significantly subaverage general intellectual functioning with significant deficits in adaptive functioning.

b. Signs may include, but are not limited to, poor conceptual, social, and practical skills, and a tendency to be passive, placid, and dependent on others, or to be impulsive or easily frustrated. When we evaluate your adaptive functioning, we also consider the factors in 112.00F.

c. We consider your IQ score to be "valid" when it is supported by the other evidence, including objective clinical findings, other clinical observations, and evidence of your day-to-day functioning that is consistent with the test score. If the IQ test provides more than one IQ score (for example, a verbal, performance, and full scale IQ in a Wechsler series test), we use the lowest score. When we consider your IQ score, we apply the rules in 112.00D4.

d. In 112.05C, the term "severe" has the same meaning as in § 416.924(c). Your additional impairment(s) must cause more than slight or minimal physical or mental functional limitations. The limitations must be separate from the limitations caused by your ID/MR.

e. Listing 112.05 is for ID/MR only. We evaluate other mental disorders that primarily affect cognition in the listing categories for dementia and amnestic and other cognitive disorders (112.02); autism spectrum disorders (112.10), or other disorders usually first diagnosed in childhood or adolescence (112.11), as appropriate.

5. Anxiety Disorders (112.06)

a. These disorders are characterized by excessive anxiety, worry, apprehension, and fear, or by avoidance of feelings, thoughts, activities, objects, places, or persons.

b. Symptoms and signs may include, but are not limited to, restlessness, difficulty concentrating, hyper-vigilance, muscle tension, sleep disturbance, fatigue, panic attacks, obsessions and compulsions, constant thoughts and fears about safety, and frequent somatic complaints. Symptoms and signs associated with trauma may include recurrent intrusive recollections of a traumatic event, and acting or feeling as if the traumatic event were recurring. Depending on a child's age and developmental stage, other features may also include refusal to go to school, academic failure, frequent stomachaches and other physical complaints, extreme worries about sleeping away from home, being overly clinging, and exhibiting tantrums at times of separation from caregivers.

c. Examples of disorders in this category include panic disorder, phobic disorder, obsessive-compulsive disorder, post-traumatic stress disorder (PTSD), generalized anxiety disorder, and anxiety disorder due to a general medical condition.

6. Somatoform Disorders (112.07)

a. These disorders are characterized by physical symptoms or deficits that are not intentionally produced or feigned, and that, following clinical investigation, cannot be fully explained by a general medical condition, another mental disorder, the direct effects of a substance, or a culturally sanctioned behavior or experience.

b. Symptoms and signs may include, but are not limited to, pain and other abnormalities of sensation, gastrointestinal symptoms, fatigue, abnormal motor movement, pseudoseizures, and pseudoneurological symptoms, such as blindness or deafness.

c. Examples of disorders in this category include somatization disorder, conversion disorder, body dysmorphic disorder, and pain disorder associated with psychological factors.

7. Personality Disorders (112.08)

a. These disorders are characterized by an enduring, inflexible, pervasive, and maladaptive pattern of inner experience and behavior that causes clinically significant distress or impairment in social, occupational, or other important areas of functioning, and that has an onset in adolescence.

b. Symptoms and signs may include, but are not limited to, patterns of distrust, suspiciousness, and odd beliefs; social

detachment, discomfort, or avoidance; hypersensitivity to negative evaluation; an excessive need to be taken care of; difficulty making independent decisions; a preoccupation with orderliness, perfectionism, and control; grandiosity; inappropriate and intense anger; self-mutilating behaviors; and recurrent suicidal threats, gestures, or attempts.

c. Examples of disorders in this category include paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, dependent personality disorder, borderline personality disorder, and obsessive-compulsive personality disorder.

8. Autism Spectrum Disorders (112.10)

a. These disorders are characterized by qualitative deficits in the development of reciprocal social interaction, verbal and nonverbal communication skills, and symbolic or imaginative play; restricted repetitive and stereotyped patterns of behavior, interests, and activities; and early stagnation of skill acquisition or loss of previously acquired skills.

b. Symptoms and signs may include, but are not limited to, abnormalities and unevenness in the development of cognitive skills; unusual responses to sensory stimuli; and behavioral difficulties, including hyperactivity, short attention span, impulsivity, aggressiveness, or self-injurious actions.

c. Examples of disorders in this category include autistic disorder, Asperger's disorder, and pervasive developmental disorder (PDD).

d. This category does not include mental disorders that are included in the listing categories for dementia and amnestic and other cognitive disorders (112.02), ID/MR (112.05), and other disorders usually first diagnosed in childhood or adolescence (112.11).

9. Other Disorders Usually First Diagnosed in Childhood or Adolescence (112.11)

a. These disorders are characterized by onset during childhood or adolescence.

b. Symptoms and signs may include, but are not limited to, underlying abnormalities in cognitive processing (for example, deficits in learning and applying verbal or nonverbal information, visual perception, memory, or a combination of these), deficits in attention or impulse control, low frustration tolerance, excessive or poorly planned motor activity, difficulty with organizing (time, space, materials, or tasks), repeated accidental injury, and deficits in social skills. Symptoms and signs specific to some disorders in this category include fecal incontinence or urinary incontinence. Symptoms and signs specific to tic disorders include sudden, rapid, recurrent, non-rhythmic, stereotyped motor movement or vocalization; mood lability; and obsessions and compulsions.

c. Examples of disorders in this category include learning disorders; attention-deficit/hyperactivity disorder; elimination disorders, such as developmentally inappropriate encopresis and enuresis; and tic disorders, such as Tourette syndrome, chronic motor or vocal tic disorder, and transient tic disorder.

d. This category does not include mental disorders that are included in the listing categories for dementia and amnestic and other cognitive disorders (112.02), ID/MR (112.05), and autism spectrum disorders (112.10).

10. Eating Disorders (112.13)

a. These disorders are characterized by persistent eating of nonnutritive substances or repeated episodes of regurgitation and re-chewing of food, or by persistent failure to consume adequate nutrition by mouth. In adolescence, these disorders are characterized by disturbances in eating behavior and preoccupation with, and excessive self-evaluation of, body weight and shape.

b. Symptoms and signs may include, but are not limited to, failure to make expected weight gains; refusal to maintain a minimally normal weight or a minimally normal body mass index (BMI); recurrent episodes of binge eating and behavior intended to prevent weight gain, such as self-induced vomiting, excessive exercise, or misuse of laxatives; mood disturbances, social withdrawal, or irritability; amenorrhea; dental problems; abnormal laboratory findings; and cardiac abnormalities.

c. Examples of disorders in this category include pica, rumination disorder, and feeding disorders of early childhood; anorexia nervosa; and bulimia nervosa.

C. *What are the paragraph B criteria for children age 3 to the attainment of age 18?* The paragraph B criteria are the mental abilities a child uses to do age-appropriate activities. They are the abilities to: Understand, remember, and apply information (paragraph B1); interact with others (paragraph B2); concentrate, persist, and maintain pace (paragraph B3); and manage oneself (paragraph B4). In this section, we provide basic definitions of the four paragraph B mental abilities and some examples of how a child may use these mental abilities to function. In 112.00D, we explain how we rate the severity of limitations in the paragraph B mental abilities under these listings.

1. *Understand, remember, and apply information (paragraph B1).* This is the ability to acquire, retain, integrate, access, and use information to perform age-appropriate activities. You use this mental ability when, for example, you follow instructions, provide explanations, and identify and solve problems.

2. *Interact with others (paragraph B2).* This is the ability to relate to others at home, at school, and in the community. You use this mental ability when, for example, you initiate and maintain friendships, cooperate, handle conflicts, and respond to requests, suggestions, and criticism.

3. *Concentrate, persist, and maintain pace (paragraph B3).* This is the ability to focus attention on age-appropriate activities and to stay on task at a sustained rate. You use this mental ability when, for example, you concentrate, avoid distractions, initiate and complete activities, perform tasks at an appropriate and consistent speed, and sustain an ordinary routine.

4. *Manage oneself (paragraph B4).* This is the ability to regulate your emotions, control your behavior, and maintain your well-being in age-appropriate activities and settings. You use this mental ability when, for example, you cope with your frustration and stress, respond to demands and changes in your environment, protect yourself from harm and exploitation by others, inhibit inappropriate actions, take your medications, and maintain your physical health, hygiene, and grooming.

D. *How do we use the paragraph B mental abilities to evaluate mental disorders in children from age 3 to the attainment of age 18?*

1. *General*

a. When we rate your limitations using the paragraph B mental abilities, we consider only limitations you have because of your mental disorder.

b. We evaluate your limitations in the context of what is typically expected of children your age without mental disorders. To do most age-appropriate activities, a child is expected to use his or her mental abilities (given age-appropriate expectations) independently, appropriately, effectively, *and* on a sustained basis.

c. Marked or extreme limitation of a paragraph B mental ability reflects the overall degree to which your mental disorder interferes with your using that ability (given age-appropriate expectations) independently, appropriately, effectively, *and* on a sustained basis to do age-appropriate activities. It does not necessarily reflect a specific type or number of activities, including activities of daily living, that you have difficulty doing. In addition, no single piece of information (including test scores) can establish whether you have marked or extreme limitation of a paragraph B mental ability. (See 112.00D4.)

d. Marked or extreme limitation of a paragraph B mental ability also reflects the kind and extent of supports you receive (beyond the supports that other children your age without mental disorders typically receive) and the characteristics of any highly structured setting in which you spend your time that enable you to function as you do. The more extensive the supports or the more structured the setting you need to function, the more limited we will find you to be. (*See* 112.00F and § 416.924a.)

2. *What we mean by* "*marked*" *limitation*

a. *Marked limitation* of a paragraph B mental ability means that the symptoms and signs of your mental disorder interfere *seriously* with your using that mental ability (given age-appropriate expectations) independently, appropriately, effectively, *and* on a sustained basis to do age-appropriate activities. Although we do not require the use of such a scale, marked would be the fourth point on a five-point rating scale consisting of no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation.

b. Although we do not require standardized test scores to determine whether you have marked limitations, we will generally find that you have marked limitation of a paragraph B mental ability when you have a valid score that is at least two, but less than three, standard deviations below the mean on an individually administered standardized test designed to measure that ability and the evidence shows that your functioning over time is consistent with the score. (*See* also 112.00D4.)

c. Marked limitation is also the equivalent of the level of limitation we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean for your age.

3. *What we mean by* "*extreme*" *limitation*

a. *Extreme limitation* of a paragraph B mental ability means that the symptoms and signs of your mental disorder interfere *very seriously* with your using that mental ability (given age-appropriate expectations) independently, appropriately, effectively, *and* on a sustained basis to do age-appropriate activities. Although we do not require the use of such a scale, extreme would be the last point on a five-point rating scale consisting of no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation.

b. Although we do not require standardized test scores to determine whether you have extreme limitation, we will generally find that you have extreme limitation of a paragraph B mental ability when you have a valid score that is at least three standard deviations below the mean for your age on an individually administered standardized test designed to measure that ability and the evidence shows that your functioning over time is consistent with the score. (*See* also 112.00D4.)

c. "Extreme" is the rating we give to the worst limitations; however, it does not necessarily mean a total lack or loss of ability to function. It is the equivalent of the level of limitation we would expect to find on standardized testing with scores that are at least three standard deviations below the mean for your age.

4. *How we consider your test results*

a. We do not rely on any IQ score or other test result alone. We consider your test scores together with the other information we have about how you use the mental abilities described in the paragraph B criteria in your day-to-day functioning.

b. We may find that you have "marked" or "extreme" limitation when you have a test score that is slightly higher than the levels we provide in 112.00D2 and D3 if other information in your case record shows that your functioning in day-to-day activities is seriously or very seriously limited. We will not find that you have "marked" or "extreme" limitation in your ability to understand, remember, and apply information (or in any other ability measured by a standardized test) unless you have evidence demonstrating that your functioning is consistent with such a limitation.

c. Generally, we will not find that a test result is valid for our purposes when the information we have about your functioning is of the kind typically used by medical professionals to determine that the test results are not the best measure of your day-to-day functioning. If there is a material inconsistency between your test results and other information in your case record, we will try to resolve it. We use the following guidelines when we consider your test scores:

(i) The interpretation of the test is primarily the responsibility of the professional who administered the test. The narrative report that accompanies the test results should specify whether the results are deemed to be valid; that is, whether they are consistent with your medical and developmental history and information about your day-to-day functioning.

(ii) It is our responsibility to ensure that the evidence in your case record is complete and to resolve any material inconsistencies in the evidence. In some cases, we will be able to resolve an inconsistency with the information already in your case record. In others, we may need to request additional information; for example, by recontacting your medical source(s), by purchasing a consultative examination, or by questioning persons who are familiar with your day-to-day functioning.

E. *What are the paragraph C criteria, and how do we use them to evaluate mental disorders in children age 3 to the attainment of age 18?*

1. *General.* We use the paragraph C criteria as an alternative to paragraph B to evaluate "serious and persistent mental disorders" under every mental disorders listing except 112.05. We can use the paragraph C criteria without first considering whether your mental disorder satisfies the paragraph B criteria.

2. *Paragraph C criteria*

a. To meet the paragraph C criteria, you must have a medically documented history, over a period of at least 1 year, of the existence of a serious and persistent mental disorder. Your mental disorder must also satisfy the criteria in C1 and C2.

b. *The criterion in C1* is satisfied when the evidence shows that continuing treatment, psychosocial support(s), or a highly structured setting(s) diminishes the symptoms and signs of your mental disorder. (*See* 112.00F.)

c. *The criterion in C2* is satisfied when the evidence shows that you have achieved only marginal adjustment despite your diminished symptoms and signs. "Marginal adjustment" means that your adaptation to the requirements of daily living and your environment is fragile; that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life. Changes or increased demands would likely lead to an exacerbation of your symptoms and signs and to deterioration in your functioning; for example, you would be unable to function outside a highly structured setting or outside your home. Similarly, because of the nature of your mental disorder, you could experience episodes of deterioration that require you to be hospitalized or absent from school, making it difficult for you to sustain age-appropriate activity over time.

F. *How do we consider psychosocial supports, highly structured settings, and treatment when we evaluate the functioning of children age 3 to the attainment of age 18?*

1. *Psychosocial supports and highly structured settings* may help you to function by reducing the demands made on you. However, your ability to function in settings (including your own home) that are less demanding, more structured, or more supportive than those in which children typically function does not necessarily show how you would function in school or other age-appropriate settings on a sustained basis. Therefore, we will consider the kind and extent of supports you receive and the characteristics of any structured setting in which you spend your time (compared to children your age without mental disorders) when we evaluate the effect of your mental disorder on your functioning and rate the limitation of your mental abilities (*see* 112.00D).

2. *Examples of psychosocial supports and highly structured settings*

a. You need family members or other persons to help you in ways that children your age without mental disorders typically do not need to function age-appropriately; for example, you need an aide to accompany you on the school bus to help you control your actions or to monitor you to be sure you are not being self-injurious or injurious to others.

b. You receive one-on-one assistance in your classes every day, or you have a personal aide who helps you daily to function in your classroom.

c. You are a student in a self-contained classroom or attend a separate or alternative school where you receive special education services (*see* 112.00G4).

d. You are a student in a special education setting that teaches you daily living skills, vocational skills, or entry-level work to help you be independent when you become an adult (*see* 112.00G4).

e. You participate in a sheltered, supported, or transitional work program or in a competitive employment setting with the help of a job coach or an accommodating supervisor (*see* 112.00G4).

f. You receive treatment in a day program at a hospital, community treatment program, or other daily outpatient program.

g. You live in a group home, halfway house, or semi-independent living program with a counselor or resident supervisor who is there 24 hours a day.

h. You live in a residential school, hospital, or other institution with 24-hour care.

3. *Treatment*

a. With treatment, such as medications and social skills training, you may not only have your symptoms and signs reduced, but may be able to function well enough to perform age-appropriate activities.

b. Treatment may not resolve all of the functional limitations that result from your mental disorder, and the medications you take or other treatment you receive for your disorder may cause side effects that affect your mental or physical functioning; for example, you may experience drowsiness, blunted affect, or abnormal involuntary movements.

c. We will consider the effect of any treatment on your functioning when we evaluate your mental disorder under these listings.

G. *What evidence do we need to evaluate your developmental or mental disorder?*

1. *General*

a. If you have not attained age 3, we need evidence to assess the existence and severity of your developmental disorder and its effects on your ability to acquire and maintain the skills needed to function age-appropriately. (*See* 112.00I for guidelines

about evaluating developmental disorders in infants and toddlers under 112.14.)

b. If you are age 3 to the attainment of age 18, we need evidence to assess the existence and severity of your mental disorder and its effects on your ability to function age-appropriately.

c. Although we always need evidence from an acceptable medical source, the individual facts of your case will determine the extent of that evidence and what evidence, if any, we need from other sources. For our basic rules on evidence, *see* §§ 416.912 and 416.913. For our rules on evidence about a child's symptoms, *see* § 416.929.

2. *Evidence from medical sources.* We will consider all relevant medical evidence about your mental disorder from your physician, psychologist, and your other medical sources. Other medical sources include health care providers, such as physician assistants, nurses, licensed clinical social workers, and therapists. These other medical sources can be very helpful in providing evidence to assess the severity of your mental disorder and the resulting limitation in functioning, especially if they see you regularly. Evidence from medical sources may include:

a. Your reported symptoms.

b. Your medical, developmental, psychiatric, and psychological history.

c. The results of physical or mental status examinations or other clinical findings.

d. Psychological testing, developmental assessments, imaging studies, or other laboratory findings.

e. Your diagnosis.

f. The type, dosage, frequency, duration, and beneficial effects of medications you receive.

g. The type, frequency, duration, and beneficial effects of therapy, counseling, or early intervention you receive.

h. Any side effects of medication or other treatment that limit your ability to function (*see* 112.00F).

i. Your clinical course, including changes in your medication, therapy, or counseling and the time required for therapeutic effectiveness.

j. Observations and descriptions of how you function.

k. Any psychosocial support(s) you receive or highly structured setting(s) in which you are involved (*see* 112.00F).

l. Any sensory, motor, or speaking abnormalities or information about your cultural background (for example, language differences, customs) that may affect an evaluation of your developmental or mental disorder.

m. The expected duration of your symptoms and signs and their effects on your ability to function age-appropriately over time.

3. *Evidence from you and persons who know you.* We will ask you to describe your symptoms and your limitations if you are able to do so, and we will use that information to help us determine whether you are disabled. We will also consider information from persons who can describe how you usually function from day to day when we need it to show the severity of your mental disorder and how it affects your ability to function. This information may include, but is not limited to, information from your family, other caregivers, friends, neighbors, or clergy. We will consider your statements and the statements of other persons to determine if they are consistent with the medical and other evidence we have.

4. *Evidence from early intervention programs, school, vocational training, work, and work-related programs.*

a. If you receive services in an Early Intervention Program to help you with your special developmental needs, we will consider information from your Individualized Family Service Plan (IFSP) when we need it to show the severity of your developmental disorder.

b. If you receive special education or related services at your preschool or school, we will consider the information in your Individualized Education Program (IEP) when we need it to show the severity of your mental disorder and how it affects your ability to function. The information may come from classroom teachers, special educators, nurses, school psychologists, and occupational, physical, and speech/language therapists. It may include, but is not limited to, comprehensive evaluation reports, IEPs, education records, therapy progress notes, information from your teachers about how you function in their classrooms, and information about any special education services or accommodations you receive at school.

c. If you have recently attended or are still attending vocational training classes or if you have attempted to work or are working now, we will consider information from your training program or your employer when we need it to show the severity of your mental disorder and how it affects your ability to function. This information may include, but is not limited to, training or work evaluations, modifications to your work duties or work schedule, and any special supports or accommodations you have required or now require in order to work. If you have worked or are working through a community mental health program, a sheltered work program, a supported work program, a rehabilitation program, or a transitional employment program, we will consider the type and degree of support you have received or are receiving in order to work.

5. *Evidence from developmental assessments or psychological and psychiatric measures.* We will consider the results from developmental assessments or from psychological and psychiatric measures together with all the other evidence in your case record. Results from these measures are only part of the evidence we use in our overall disability evaluation; we will not use these results alone to decide whether you are disabled. (*See* 112.00D4.)

6. *Need for longitudinal evidence.*

a. Many children with mental disorders experience periods of worsening of the symptoms and signs of their mental disorders (exacerbations) and periods of improvement of their symptoms and signs (remissions). Exacerbations may make it difficult for you to function age-appropriately on a sustained basis. Therefore, we generally will consider how you function longitudinally; that is, over time. We will not find that you are able to function age-appropriately solely because you have a period(s) of remission, or that you are disabled solely because you have an exacerbation(s) of your mental disorder. We will consider how often you have remissions and exacerbations and how long they last, what causes your mental disorder to improve or worsen, and any other information that is relevant to our determination about how you function over time. We will consider longitudinal evidence from relevant sources over a sufficient period to establish the severity of your mental disorder over time.

b. If you have a serious mental disorder, you will probably have evidence of its effects on your functioning over time, even if you do not have an ongoing relationship with the medical community. For example, family members, friends, day-care providers, teachers, neighbors, former employers, social workers, mental health clinics, emergency shelters, law enforcement, or government agencies may be familiar with your mental health history.

c. You may function differently and appear more or less limited in an unfamiliar or one-time situation, such as a consultative examination, than is indicated by other information about your functioning over time (*see* § 416.924a(b)(6)). Your ability to function during a time-limited mental status examination or psychological testing, or in another unfamiliar or one-time situation, does not necessarily show how you will be able to function in a school or other age-appropriate setting on a sustained basis.

d. Some of your day-to-day activities, or some of the places where you spend time each day, can be stressful if you have a mental disorder, making it difficult for you to function as other children without mental disorders typically do. For example, you may have to leave your home to go to daycare where the level of activity and noise is stressful to you; or you may feel stressed when you move from elementary to middle school, where you have to change classrooms and settle yourself down to new situations and settings many times during each day.

(i) Your reaction to stress associated with the demands of your day-to-day activities may be different from another child's; that is, the symptoms and signs of your mental disorder may be more or less affected by stress than those of another child with the same mental disorder or another mental disorder.

(ii) We will consider evidence from all sources about the effects of stress on your mental abilities. We will also take into consideration what, if any, psychosocial support(s) or structure you would need when you experience stress (*see* 112.00F).

H. *How do we evaluate substance use disorders?* If we find that you are disabled and there is medical evidence in your case record establishing that you have a substance use disorder, we will determine whether your substance use disorder is a contributing factor material to the determination of disability. (*See* § 416.935.)

I. *How do we use 112.14 to evaluate developmental disorders of infants and toddlers from birth to attainment of age 3?*

1. *General.* If you are a child from birth to attainment of age 3 with a developmental disorder, we use 112.14 to evaluate your ability to acquire and maintain the motor, cognitive, social/communicative, and emotional skills you need to function age-appropriately. When we rate your impairment-related limitations for this listing, we consider only limitations you have because of your developmental disorder. If you have a somatic illness or physical abnormalities, we will evaluate them under the affected body system; for example, the musculoskeletal or neurological system.

2. *Description of 112.14*

a. Developmental disorders are characterized by a delay or deficit in the development of age-appropriate skills or a loss of previously acquired skills involving motor planning and control, learning, relating socially and communicating, and self-regulating.

b. Examples of disorders in this category include feeding and eating disorders, sensory processing disorder, developmental coordination disorder, autism and other pervasive developmental disorders, separation anxiety disorder, and regulatory disorders. Some infants and toddlers may have a diagnosis of "developmental delay."

c. When we evaluate your developmental disorder, we will consider the wide variation in the range of normal or typical development in early childhood. Your emerging skills at the end of an expected milestone period may or may not indicate developmental delay or a delay that can be expected to last for 12 months.

3. *What are the paragraph B criteria for 112.14?*

a. *General.* The paragraph B criteria are the developmental abilities that infants and toddlers use to acquire and maintain the skills needed to function age-appropriately. They are the abilities to: Plan and control motor movement (paragraph B1); learn and remember (paragraph B2); interact with others (paragraph B3); and regulate physiological functions, attention, emotion, and behavior (paragraph B4). We use these criteria to evaluate limitations that result from the developmental disorder. In 112.00I3b(i) through I3b(iv), we provide some examples of how infants and toddlers use these developmental abilities to function age-appropriately. In 112.00I4, we explain how we rate the severity of limitations in the paragraph B mental abilities under 112.14.

b. *Definitions of the paragraph B developmental abilities*

(i) *Ability to plan and control motor movement (paragraph B1).* This is the ability to plan, remember, and execute controlled motor movements by integrating and coordinating perceptual and sensory input with motor output. Using this ability develops gross and fine motor skills, and makes it possible for you to engage in age-appropriate symmetrical or alternating motor activities. You use this ability when, for example, you walk, pull yourself up to stand, grasp and hold objects with one or both hands, and go up and down stairs with alternating feet.

(ii) *Ability to learn and remember (paragraph B2).* This is the ability to learn by exploring the environment, engaging in trial-and-error experimentation, putting things in groups, understanding that words represent things, and participating in pretend play. Using this ability develops the skills that help you understand what things mean, how things work, and how you can make things happen. You use this ability when, for example, you show interest in objects that are new to you, imitate simple actions, name body parts, understand simple cause-and-effect relationships, remember simple directions, or figure out how to take something apart.

(iii) *Ability to interact with others (paragraph B3).* This is the ability to participate in reciprocal social interactions and relationships by communicating your feelings and intents through vocal and visual signals and exchanges; physical gestures, contact, and proximity; shared attention and affection; verbal turn-taking; and increasingly complex messages. Using this ability develops the social skills that make it possible for you to influence others (for example, by gesturing for a toy or saying "no" to stop an action); invite someone to interact with you (for example, by smiling or reaching); and draw someone's attention to what interests you (for example, by pointing or taking your caregiver's hand and leading that person). You use this ability when, for example, you use vocalizations to initiate and sustain a "conversation" with your caregiver; respond to limits set by an adult with words, gestures, or facial expressions; play alongside another child; or participate in simple group activities with adult help.

(iv) *Ability to regulate physiological functions, attention, emotion, and behavior (paragraph B4).* This is the ability to stabilize biological rhythms (for example, by acquiring a sleep/wake cycle); control physiological functions (for example, by achieving regular patterns of feeding); and attend, react, and adapt to environmental stimuli, persons, objects, and events (for example, by becoming alert to things happening around you and in relation to you, and responding without overreacting or underreacting). Using this ability develops the skills you need to regulate yourself and makes it possible for you to achieve and maintain a calm, alert, and organized physical and emotional state. You use this ability when, for example, you recognize your body's needs for food or sleep, focus quickly and pay attention to things that interest you, cry when you are hurt but quiet when your caregiver holds you, comfort yourself with your favorite toy when you are upset, ask for help when something frustrates you, or refuse help from your caregiver when trying to do something for yourself.

4. *How do we use the 112.14 criteria to evaluate your developmental disorder?*

a. We will find that your developmental disorder meets the requirements of 112.14 if it results in marked limitations of two or extreme limitation of one of the paragraph B developmental abilities.

b. We will evaluate your limitations in the context of what is typically expected of infants or toddlers your age without developmental disorders. An infant or toddler is expected to use his or her developmental abilities to achieve a recognized pattern of milestones, over a typical range of time, in order to acquire and maintain the skills needed to function age-appropriately.

c. Marked or extreme limitation of a paragraph B developmental ability reflects the overall degree to which your developmental disorder interferes with your using that ability. It does not necessarily reflect a specific type or number of developmental skills or activities that you have difficulty doing. In addition, no single piece of information, including test scores, can establish whether you have marked or extreme limitation of a paragraph B developmental ability. (*See* 112.00H4g.)

d. Marked or extreme limitation of a paragraph B developmental ability also reflects the kind and extent of supports you receive (beyond the supports that infants or toddlers your age without developmental disorders typically receive), and the characteristics of any highly structured settings in which you spend your time, that enable you to function as you do. The more extensive the supports or the more structured the setting you need to function, the more limited we will find you to be. (*See* 112.00I5 and § 416.924a.)

e. *What we mean by "marked" limitation*

(i) *Marked limitation* of a paragraph B developmental ability means that the symptoms and signs of your developmental disorder interfere *seriously* with your using that ability to acquire and maintain the skills you need to function age-appropriately. Although we do not require the use of such a scale, marked would be the fourth point on a five-point rating scale consisting of no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation.

(ii) Although we do not require standardized test scores to determine whether you have marked limitations, we will generally find that you have marked limitation of a paragraph B developmental ability when you have a valid score that is at least two, but less than three, standard deviations below the mean on a comprehensive standardized developmental assessment designed to measure that ability and the evidence shows that your functioning over time is consistent with the score.

(iii) Marked limitation is also the equivalent of the level of limitation we would expect to find on standardized developmental assessments with scores that are at least two, but less than three, standard deviations below the mean for your age.

(iv) When there are no results from a comprehensive standardized developmental assessment in your case record, we can evaluate your disorder based on a comprehensive clinical developmental assessment; that is, an assessment of more than one or two isolated skills, with abnormal findings noted on repeated examinations. We will find marked limitation of a paragraph B developmental ability if your skills and functioning on a clinical developmental assessment are at a level that is typical of children who are more than one-half, but not more than two-thirds, your chronological age.

f. *What we mean by "extreme" limitation*

(i) *Extreme limitation* of a paragraph B developmental ability means that the symptoms and signs of your developmental disorder interfere *very seriously* with your ability to acquire and maintain the skills that you need to function age-appropriately. Although we do not require the use of such a scale, extreme would be the last point on a five-point rating scale consisting of no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation.

(ii) Although we do not require standardized test scores to determine whether you have extreme limitation, we will generally find that you have extreme limitation of a paragraph B developmental ability when you have a valid score that is at least three standard deviations below the mean on a comprehensive standardized developmental assessment designed to measure that ability and the evidence shows that your functioning over time is consistent with the score.

(iii) "Extreme" is the rating we give to the worst limitations; however, it does not necessarily mean a total lack or loss of ability to function. It is the equivalent of the level of limitation we would expect to find on standardized developmental assessments with scores that are at least three standard deviations below the mean for your age.

(iv) When there are no results from a comprehensive standardized developmental assessment in your case record, we can evaluate your disorder based on a comprehensive clinical developmental assessment; that is, an assessment of more than one or two isolated skills, with abnormal findings noted on repeated examinations. We will find extreme limitation of a paragraph B developmental ability if your skills and functioning on a clinical developmental assessment are at a level that is typical of children who are no more than one-half your chronological age.

g. *How we consider your test results.* We use the rules in 112.00D4 to evaluate any test results in your case record.

5. *How do we consider supports when we evaluate functioning under 112.14?*

a. If you have a developmental delay or your skills are qualitatively deficient, you may receive support in the form of early intervention services to help you acquire needed skills or to improve those that you have.

b. You may receive therapeutic intervention, such as occupational therapy, from a visiting early childhood specialist or therapist who sees you in your home or in a structured clinical setting that is specially designed to enable you to develop specific skills. You may receive more direct help at home in acquiring skills than other children your age when, for example, your caregiver repeatedly models a sequence of physical actions for you to imitate or spends large amounts of time helping you to calm yourself when you are upset. Generally, the more direct help or therapeutic intervention you need to develop skills compared to other infants and toddlers your age without developmental disorders, the more limited we will find you to be.

6. *Deferral of determination*

a. *Full-term infants*

(i) In the first few months of life, full-term infants typically display some irregularities in observable behaviors (for example, sleep cycles, feeding, responding to stimuli, attending to faces, self-calming), making it difficult to assess the presence, severity, and duration of a developmental disorder.

(ii) When the evidence indicates that you may have a significant developmental delay, but there is insufficient evidence to make a determination, we will defer making a disability determination under 112.14 until you are at least 6 months old. This will allow us to obtain a longitudinal medical history so that we can more accurately evaluate your developmental patterns and functioning over time. When you are at least 6 months old, any developmental delay you may have can be better assessed, and you can undergo standardized developmental testing, if indicated.

b. *Premature infants.* If you were born prematurely, we will follow the rules in § 416.924b(b) to determine your *corrected chronological age;* that is, the chronological age adjusted by the period of gestational prematurity. When the evidence indicates that you may have a significant developmental delay, but there is insufficient evidence to make a determination, we will defer your case until you attain a corrected chronological age of at least 6 months in order to better evaluate your developmental delay.

c. *When we will not defer a determination.* We will not defer our determination if we have sufficient evidence to determine that you are disabled under 112.14 or any other listing, or that you have a combination of impairments that functionally equals the listings. In addition, we will not defer our determination if the evidence demonstrates that you are not disabled.

J. How do we evaluate mental and developmental disorders that do not meet one of the mental disorders listings?

1. These listings include only examples of mental and developmental disorders that we consider severe enough to result in marked and severe functional limitations. If your severe mental or developmental disorder does not meet the criteria of any of these listings, we will also consider whether you have an impairment(s) that meets the criteria of a listing in another body system. You may have a separate other impairment(s) or a physical impairment(s) that is secondary to your mental disorder. For example, if you have an eating disorder and develop a cardiovascular impairment because of it, we will evaluate your cardiovascular impairment under the listings for the cardiovascular body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (*See* § 416.926.) If it does not, we will also consider whether you have an impairment(s) that functionally equals the listings. (See § 416.926a.) When we determine whether your impairment(s) functionally equals the listings, we consider all of your physical and mental limitations. If you have limitations in your ability to perform physical activities that are secondary to your mental or developmental disorder, we will consider them when we determine whether your disorder functionally equals the listings. For example, limitations in walking or standing due to the side effects of medication you take to treat your mental disorder may affect your age-appropriate activities requiring physical exertion. When we decide whether you continue to be disabled, we use the rules in §§ 416.994 and 416.994a.

112.01 Category of Impairments, Mental Disorders

112.02 *Dementia and Amnestic and Other Cognitive Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B1).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.03 *Schizophrenia and Other Psychotic Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B2).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.04 *Mood Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B3).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.05 *Intellectual Disability/Mental Retardation* (ID/MR) satisfying A, B, C, or D.

A. For children age 3 to the attainment of age 18, ID/MR as defined in 112.00B4, with mental incapacity evidenced by dependence upon others for personal needs (grossly in excess of age-appropriate dependence) and an inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded.

OR

B. For children age 3 to the attainment of age 18, ID/MR as defined in 112.00B4, with a valid IQ score of 59 or less (as defined in 112.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 112.00D4).

OR

C. For children age 3 to the attainment of age 18, ID/MR as defined in 112.00B4, with a valid IQ score of 60 through 70 (as defined in 112.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (see 112.00D4) and with another "severe" physical or mental impairment (*see* 112.00B4e).

OR

D. For children from age 3 to the attainment of age 18, ID/MR as defined in 112.00B4, with a valid IQ score of 60 through 70 (as defined in 112.00B4d) on an individually administered standardized test of general intelligence having a mean of 100 and a standard deviation of 15 (*see* 112.00D4), resulting in *marked* limitation of at least two of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

112.06 *Anxiety Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B5).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C1).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.07 *Somatoform Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B6).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.08 *Personality Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B7).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.10 *Autism Spectrum Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B8).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.11 *Other Disorders Usually First Diagnosed in Childhood or Adolescence,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B9).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.13 *Eating Disorders,* with both A and B or both A and C.

A. For children age 3 to attainment of age 18, a medically determinable mental disorder in this category (*see* 112.00B10).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following mental abilities:

1. Ability to understand, remember, and apply information (*see* 112.00C1).

2. Ability to interact with others (*see* 112.00C2).

3. Ability to concentrate, persist, and maintain pace (*see* 112.00C3).

4. Ability to manage oneself (*see* 112.00C4).

OR

C. A serious and persistent mental disorder in this category (*see* 112.00E2) with both:

1. Continuing treatment, psychosocial support(s), or a highly structured setting(s) that diminishes the symptoms and signs of your mental disorder, *and*

2. Marginal adjustment, as described in 112.00E2c.

112.14 *Developmental Disorders of Infants and Toddlers,* with both A and B.

A. For children from birth to attainment of age 3, a medically determinable developmental disorder in this category (*see* 112.00I2).

AND

B. *Marked* limitations of *two* or *extreme* limitation of *one* of the following developmental abilities:

1. Ability to plan and control motor movement (*see* 112.00I3b(i)).

2. Ability to learn and remember (*see* 112.00I3b(ii)).

3. Ability to interact with others (*see* 112.00I3b(iii)).

4. Ability to regulate physiological functions, attention, emotion, and behavior (*see* 112.00I3b(iv)).

* * * * *

114.00 Immune System Disorders

* * * * *

D. *How do we document and evaluate the listed autoimmune disorders?*

* * * * *

6. *Inflammatory arthritis (114.09).*

* * * * *

e. *How we evaluate inflammatory arthritis under the listings.*

* * * * *

(ii) Listing-level severity is shown in 114.09B and 114.09C2 by inflammatory arthritis that involves various combinations of complications of one or more major peripheral joints or involves other joints, such as inflammation or deformity, extra-articular features, repeated manifestations, and constitutional symptoms and signs.

* * *

* * * * *

114.01 Category of Impairments, Immune System Disorders

114.02 *Systemic lupus erythematosus,* as described in 114.00D1. With involvement of two or more organs/body systems, and with:

A. One of the organs/body systems involved to at least a moderate level of severity;

AND

B. At least two of the constitutional symptoms and signs (severe fatigue, fever, malaise, or involuntary weight loss).

114.03 *Systemic vasculitis,* as described in 114.00D2. With involvement of two or more organs/body systems, and with:

A. One of the organs/body systems involved to at least a moderate level of severity;

AND

B. At least two of the constitutional symptoms and signs (severe fatigue, fever, malaise, or involuntary weight loss).

* * * * *

114.06 *Undifferentiated and mixed connective tissue disease,* as described in 114.00D5. With involvement of two or more organs/body systems, and with:

A. One of the organs/body systems involved to at least a moderate level of severity;

AND

B. At least two of the constitutional symptoms and signs (severe fatigue, fever, malaise, or involuntary weight loss).

* * * * *

114.10 *Sjögren's syndrome,* as described in 114.00D7. With involvement of two or more organs/body systems, and with:

A. One of the organs/body systems involved to at least a moderate level of severity;

AND

B. At least two of the constitutional symptoms and signs (severe fatigue, fever, malaise, or involuntary weight loss).

Subpart Q—[Amended]

7. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

8. Amend § 404.1615 by adding a new fifth sentence at the end of paragraph (d) to read as follows:

§ 404.1615 Making disability determinations.

* * * * *

(d) * * * *See* § 404.1503 regarding overall responsibility for reviewing mental impairments in the State agency.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

9. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

10. Amend § 416.903 by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2), to read as follows:

§ 416.903 Who makes disability and blindness determinations.

* * * * *

(e) * * *

(2) *Overall responsibility for evaluating mental impairments.* (i) In any case at the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing the medical severity of your mental impairment(s). The State agency disability examiner may assist in reviewing the claim and preparing documents that contain the medical portion of the case review and any applicable residual functional capacity assessment or determination about functional equivalence. However, our medical or psychological consultant must review and sign any document(s) that includes the medical portion of the case review and any applicable residual functional capacity assessment or determination about functional equivalence to attest that they are complete and that he or she is responsible for the content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the disability hearing officer has overall responsibility for assessing the medical severity of your mental impairment(s). The determination must document the disability hearing officer's pertinent findings and conclusions regarding the mental impairment(s).

(ii) At the administrative law judge hearing and Appeals Council levels, the administrative law judge or, if the Appeals Council makes a decision, the Appeals Council has overall responsibility for assessing the medical severity of your mental impairment(s). The written decision must incorporate the pertinent findings and conclusions of the administrative law judge or Appeals Council.

§ 416.920a [Removed]

11. Remove § 416.920a.

12. Revise the heading of § 416.934 and paragraph (h) to read as follows:

§ 416.934 Impairments that may warrant a finding of presumptive disability or presumptive blindness.

* * * * *

(h) Allegation of intellectual disability/mental retardation or another cognitive impairment (for example, an autism spectrum disorder) with complete inability to independently perform basic self-care activities (such as toileting, eating, dressing, or bathing) made by another person who files on behalf of a claimant who is at least 4 years old.

* * * * *

Subpart J—[Amended]

13. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

14. Amend section 416.1015 by adding a new fifth sentence at the end of paragraph (d) to read as follows:

§ 416.1015 Making disability determinations.

* * * * *

(d) * * * *See* § 416.903 regarding overall responsibility for reviewing mental impairments in the State agency. * * * * *

Subpart N—[Amended]

15. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

16. Amend § 416.1441 by revising paragraphs (b)(3) and (b)(4), and by adding a new paragraph (b)(5) to read as follows:

§ 416.1441 Prehearing case review.

* * * * *

(b) * * *

(3) There is a change in the law or regulation;

(4) There is an error in the file or some other indication that the prior determination may be revised; or

(5) An administrative law judge requires the services of a medical expert to assist in reviewing a mental disorder(s), but such services are unavailable.

* * * * *

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
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H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
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